

# Employment Status

## Employment Status Series

### General Contract Information

#### What is a contract of employment?

When you work for an employer for a regular wage you **automatically** have a contract of employment. It can either be written or oral, expressly stating your terms and conditions, or implying them. The employment relationship is essentially one based on contract. Therefore, as in any contract the usual rules apply: there must be an offer, an acceptance and consideration.

#### What are the terms of my employment?

The terms of your employment arise from a number of different sources and can contain entitlements from judge made law, employment legislation, collective agreements with unions or custom and practice within a specific sector or industry.

Like any legal contract, the contract of employment is composed of both express and implied terms.

#### What does 'express' and 'implied' terms mean?

Express terms are those terms expressly agreed and incorporated into the contract by you and the employer at the time of entering into it.

Implied terms on the other hand, are those terms incorporated into the contract by some external source e.g. by law.

Therefore the courts will only imply a term into a contract of employment if it is either:

- (a) necessary to the functioning of the contract OR
- (b) what the parties intended OR
- (c) that it is an inevitable incidence of the employment relationship.

The following are some examples of terms which may be implied into a contract of employment:

- the wage/work bargain;
- duty to obey reasonable instructions;
- health and safety;
- good faith;
- duty to take reasonable care in the giving of a reference
- the right to an indemnity

You should be made aware of the terms of your employment which are contained within your contract or statement of employment when you start work. If you have any difficulty with the contents of your contract please contact your **union representative or union official** who will explain any details you are unsure about.

### **Are all workers entitled to a written statement of employment?**

Workers who have one month's continuous service with their employer are entitled to a statement of employment. If you do not have a written statement of employment you should approach your employer about it. Your union representative will be able to advise you on this issue in more detail.

### **What should be contained in the statement of employment?**

All employers are required to provide their employees with a written statement of the particulars of the terms of their employment, which while not in itself a contract, should contain the following information:

- Name & Address of your employer
- Place of work
- Your job title & the nature of the work which you are to perform
- The start date of your employment
- Expected duration of contract (link here to types of contracts) OR
- Date of expiration of contract
- Rate of pay
- How pay is calculated

- Pay intervals (frequency of payment of wages)
- Hours of work
- Overtime & rate of payment for overtime
- Statutory rest periods
- Rest/break entitlements
- Any entitlements to paid leave
- Incapacity for work due to sickness or injury
- Indicate pay reference period (See minimum wage for further details)

***Your employer should also notify you if there are any changes to the particular items contained within the statement of employment.***

However, the statement of employment does not have to contain all the above details but may refer to additional documentation containing the information. This information and documentation should be available to every employee.

If you have any difficulties in finding this information your union representative will be able to help you.

### **I have already started work and haven't received the statement of my employment, when should I get one?**

You should receive your statement of employment from your employer within 2 months of starting work.

However, if you commenced work before **16th May 1994**, you will need to request it from your employer. Your employer is then obliged to provide you with it within 2 months of receiving the request.

If you have any difficulty receiving this statement, you should contact your **union official** who will advise you on how to obtain it.

If you have not received your contract of employment you should request it from your employer. If you need assistance with this, please contact your **union representative or union official**.

### **How can I find out my hours of work?**

Your contract or statement of employment should state your hours of work.

Under the Organisation of Working Time Act 1997, your employer is also obliged to record your hours of work. Therefore, you should contact your employer who will be able to provide you with details of the hours you have worked to date.

If you experience any difficulties getting this information, **your local union office** should be able to assist you.

### **I don't have a contract, should I have one?**

By virtue of working for a wage you automatically have a contract with your employer. However, under the Terms of Employment (Information) Acts 1994 and 2001 your employer must provide you with a written statement of **certain particulars** of the terms of employment.

### **My contract is very detailed and I don't really understand it, what should I do?**

It is important that you understand the contract you have with your employer, what you are entitled to, what is expected of you as an employee and what your role actually entails.

You should first approach your employer who should be able to explain any sections of your contract which you are not sure about. It is important that you clarify any misunderstandings you may have about your contract before commencing employment.

If you fail to obtain assistance from your employer you should contact **your local union representative** or union official for help and advice.

### **My employer wants to make some changes to my contract, I feel under pressure to agree, what should I do?**

Contracts of employment may change due to the resolution of a dispute, custom and practice, a collective agreement between your employer and union or the implementation of new employment legislation. Any change can only be made with your consent.

In unionised workplaces any changes to the terms and conditions of employment are usually the subject of negotiations between your union and employer.

If your employer wishes to make any changes or has made changes to your contract or terms and conditions of employment, it is very important that you **notify immediately** your local union representative of those changes, so that they can either explain the reason for the changes or pursue the issue directly with your employer on your behalf.

## Agency Workers

### **I am an agency worker. Who is my employer & who should I go to for information on my employment?**

The situation of agency workers is a little complicated. In Ireland we have a unique situation created by our common law where neither the end user nor the agency are the employer, rather that for some purposes legislation will deem the employer to be 'who ever pays the wages', which is usually the agency.

The Employment Agency Act 1971 which governs the operation of employment agencies in Ireland does not concern itself with the employment conditions of agency workers. Unlike other EU countries, there is no legal code covering the statutory protection of temporary agency workers. The employment rights of temporary agency workers, which are usually conditional on **service qualification** are extended under provisions in some (but not all) of the acts that comprise the net of statutory protection of employees (check out **www.UnionConnect.ie** for information on other labour legislation).

In the mid-1980's a decision was taken under Irish case law, *the Minister for Labour v PMPA Insurance Co. under administration*, (1986) which deemed that the agency temp was not an employee of the hiring company and thus did not have the protection of legislation.

The Unfair Dismissals Amendment Act 1993 overturned this decision but only for the purposes of unfair dismissals and provided that the end hirer/user is to be considered as the employer for the purposes of the Unfair Dismissals Acts. So for the purpose of the Unfair Dismissals Acts the employer **is the person for whom the agency worker works, i.e., the end user.**

However, in other employment legislation –the Terms of Employment, the Maternity Protection Act 1994, Organisation of Working Time the person who pays the wages is considered to be the employer – **usually but not always the agency**. Other Acts, such as the Fixed Term Act specifically remove rights from agency workers so the issue of who is the employer does not arise.

For the purposes of Health and Safety legislation the end user is the responsible employer so arguably the end user is the responsible employer for working time too.

Therefore, if your employer is deemed to be the end user, they will provide you with your written statement, otherwise it will be the agency.

If you have raised this query (either with the agency or end-user) and there has been no satisfactory response, you can obtain further assistance from your union representative or your local **union office**. Not a member yet? Contact UnionConnect direct @ 0818 300 900 for an application form.

## Fixed terms contracts

### **What is a fixed-term contract?**

A fixed term contract or temporary contract, is a contract with an employer, with a specific end to it. The end can be determined by:

- ➔ A set date
- ➔ The completion of a specific task
- ➔ Occurrence of a specific event

Unfair dismissal legislation does not apply to fixed term contracts of employment where the expiry is due only to the ending of that contract on the specified date or at the end of the project.

The Act provides for the improvement of the quality of fixed-term work by ensuring the principle of non-discrimination to fixed-term workers is applied. It also establishes a framework to prevent abuse arising from the use of successive fixed-terms employment contracts.

There are two types of dismissal that can occur under a fixed-term contract

- the expiry of the fixed term contract
- the early termination of the fixed term contract.

### **I have a temporary contract but it's not specific about when it finishes?**

When you received your contract it should state the condition which determines the ending of your contract such as:

- A specific date
- Completion of a specific task
- Occurrence of a specific event such as the ending of a project

If your contract doesn't state any of the above you should clarify the situation with your employer. You should seek immediate help from your union representative who will be able to advise you on the issue.

### **What is a permanent contract?**

A permanent contract is a contract between an employee and an employer where no end date is specified. This is also known as a contract of infinite duration.

In this instance, reasons for termination of the employment relationship will be specified within the contract. For more information relating to termination of employment please contact UnionConnect 0818 300 900 for a copy of the relevant factsheet.

### **My temporary contract is due for renewal soon, am I automatically entitled to a permanent contract?**

If your contract is due for renewal your employer should notify you in writing in advance of your current contract ending. This correspondence should outline the reasons for renewing a fixed-term contract and why they are not offering you a contract of infinite duration. Where a fixed-term contract is being renewed the reasons should be justified.

### **I have been on a temporary contract for a couple of years, can my employer continue to give me temporary contracts?**

As an employee on a temporary contract, the Protection of Employees (Fixed-term Work) Act 2003, applies to you.

This means that under the Act an employer cannot employ you on a series of contracts **indefinitely, without specifying adequate reasons.**

If you have completed 3 years continuous employment with your employer, the next contract can only be renewed once on a fixed term basis for no more than a year.

If you have been employed on 2 or more continuous fixed-term contracts with your employer (or associated employer), the total combined duration of those contracts should **not exceed 4 years.**

It is important that when you are nearing the end date of your fixed-term contract you should seek advice from your local union representative about seeking a contract of infinite duration.

If you have any difficulties with your contract, you should contact your union representative immediately who will be able to provide you with support, advice and in certain cases representation.

## **Are all fixed-term workers entitled to a permanent contract after 4 years?**

The rules regarding fixed-term contracts do not apply where there are **objective grounds** which justify the renewal of the contract for a fixed term period only.

The continual renewal of fixed term contracts cannot be used as a device to avoid the liability under the Unfair Dismissals legislation that could apply to you.

If you have any doubts or questions about the legitimacy of the renewal of your contract you should seek advice immediately from your local union representative. They will be in a position to provide you with the best advice for your particular situation.

## **I am on a fixed term contract and have been told I can't apply for vacancies, is this correct?**

Under the Protection of Employees (Fixed-term Work) Act 2003, you are eligible to apply for vacancies for permanent positions and your employer is also obliged to **inform** you of such vacancies. This is to ensure that, as a fixed-term worker, you have the same opportunities to access a permanent position as other employees.

Initially, you should take this issue up with your employer. If you continue to be excluded from promotional opportunities, you should contact your **local union representative** or union official, who will be able to advise you on this issue and provide appropriate support.

## **How should my employer inform me of vacancies?**

Your employer should inform all employees of all vacancies through a general advertisement in the workplace which is accessible to everyone. If you have not been made aware of such vacancies in the past you should contact your employer.

Where there is continuous failure to notify you of such vacancies, which is in breach of employment law, you can either take your case to a **Rights Commissioner** or inform your union who can take up the issue on your behalf.

## **Part-time contracts**

### **I work almost the same hours as a full-time person but our contracts are very different, is this correct?**

If you work part-time, you are entitled not to be treated in any less favourable way than a **comparable full-time employee**. Conditions which apply to full-time employees also apply to part-time employees with the **exception of pay** or conditions which are dependent on hours worked. In these instances where a condition is **dependent on hours worked**, such as entitlement to annual leave, you will be entitled to it on a pro-rata basis.

### **Do I have the same rights as a part-time worker as other workers?**

A part-time worker should not be treated in a less favourable way than a comparable full-time worker with regard to conditions of employment. Therefore all employment legislation applies to part-time workers in the same way as full-time employees. With the exception of conditions with an hours threshold, qualifying conditions in legislation applying to full-time workers applies in the same way to part-time employees.

### **As a part-time worker, how can I work out my holiday entitlements?**

The Organisation of Working Time Act 1997 applies to both part-time workers and full-time workers. Under the act, a part-time worker is entitled to one of the following, whichever gives the greater entitlement:

- 4 working weeks in a leave year, if you have worked at least 1365 hours
- 1/3 of a working week per calendar month if you have worked 117 hours per month
- 8% of your annual hours worked in a leave year subject to a maximum of 4 working weeks.

### **Are part-time workers entitled to public holidays?**

Yes provided that you have worked **40** hours in the **5** weeks preceding the public holiday. If you have not received your correct entitlements, you should contact your union representative or local union office.

### **My employer says that I can be objectively treated differently as a part-time worker, what does this mean?**

Yes, in certain circumstances. Less favourable treatment of a part-time worker, in comparison to a full-time worker, may happen where the treatment is justified on **objective grounds**. This can arise in relation to pensions, or if the person works on a casual basis where objective grounds must also exist.

This means that the treatment should be based on considerations other than the part-time workers status. For instance if a part-time worker works less than 20% of the normal full-time hours, they may be treated less favourably with regard to pension schemes or arrangements.

It is not objective unless the treatment is appropriate and necessary to achieve a legitimate objective of the employer.

*However, as with all employment legislation, the law only sets out the minimum acceptable standard. The law never precludes employers and employees and their representatives (their union) from entering into more favourable arrangements.*

*In other words, you can always have better conditions but no worse than what is required in law. For this reason, it is very important that workers become union members in order that their conditions of employment may be improved upon through negotiations and collective agreements.*

### **What is a comparable employee?**

A comparable employee, under the law, is a full-time employee to whom a part-time employee compares themselves. However, when using a full-time employee for comparison, the following conditions have to be met:

- Both are employed by the same or an associated employer **AND**
- If not employed by the same or associated employer, the full-time employee is specified in a collective agreement to be a comparable employee to a part-time employee **OR**
- If neither of the above conditions are met, the full-time employee is employed in the **same industry** or sector of employment as the part-time employee and one of the following are met:
  - Both perform the same work under the same or similar conditions or interchangeable with each other.
  - Work performed is of the same or similar nature as performed by the other. Any differences between the work performed or the conditions under which they are performed are of small importance in relation to the whole work performed or are performed irregularly deeming them to be insignificant.

- Work by the part-time employee is equal or greater in value to that performed by the comparable employee (full-time) regarding skill, physical or mental requirements, responsibility and working conditions.

### **I am a part-time agency worker, who should I compare myself to?**

If you work part-time for an agency you can **only compare** yourself to a **comparable employee** who is an agency worker.

Similarly if you are a part-time employee but not an **agency worker** you cannot compare yourself to an agency worker.

### **My employer says that the part-time legislation doesn't apply to me, is this correct?**

The Act applies to any part-time employee who is:

- Working under a contract of employment or apprenticeship
- Employed through an employment agency
- Employed in the service of the state including, civil servants, employees of Health Boards, Local Authorities, VECs, An Garda Síochána and the Defence Forces.

Your employer is obligated under the law to provide the protections of this Act to you. If your employer tries to exclude any provisions or limit the application of the Act, it will be considered to be **null and void**. If you feel that your legal entitlements have been breached or within by your employer, you should contact your union representative immediately.

This act, like all employment legislation, does not prevent more favourable conditions being agreed between employers, employees and their union representatives. Therefore, it is important that you join a union.

### **I work full-time but I want to change to part-time hours, am I entitled to part-time working?**

Under the current legislation there is no entitlement for an employer to provide you with part-time work. The Labour Relations Commission has studied the issue of part-time work and has produced a **Code of Practice** to which you could refer.

However, employers should (but are not obliged to) when requested for part-time work take the following into account:

- Requests from employees to transfer between full-time & part-time work
- Provide information on all available positions whether full-time or part-time
- Facilitate access to training for part-time workers

Unions have conducted a lot of work in this area and promote and negotiate Work Life Balance policies. If you wish to change your working hours you should contact your union official who will be able to advise you.

**LOG ON TO...**

**[www.unionconnect.ie](http://www.unionconnect.ie)**  
for information on:

- employment rights
- union member case studies
- hot topics