

# Payment of wages

## Pay & Wages Series

### **What hourly rate should I be paid?**

Your hourly wage rate depends on factors such as the industry or sector you are in, your occupation and contract of employment.

Pay rates, changes in pay and increases in pay are generally negotiated between your union and your employer. Pay is one of the most important areas that unions deal with and their focus is to ensure that members earn a decent wage, are correctly paid and pay rates keep in line with factors such as the cost of living.

The law sets out a national **minimum rate of pay together with higher rates in some areas.**

### **How can I find out what hourly rate I am on?**

You can find information on your pay rate in either:

- Your contract
- Your payslip
- Go to your employer

If you have not received a contract or terms of employment please contact your union immediately. For general information on this issue please contact UnionConnect @ 0818 300 900 to obtain a factsheet on contracts.

If you do not generally receive a payslip or statement of wages please contact your union representative immediately who will be able to offer you appropriate support and advice.

Your union official will be able to advise you on your pay entitlements and support you in securing them.

### **I have not been paid, what should I do?**

You are entitled to be paid for the work that you do and the law is quite clear on this [Payment of Wages Act 1991].

Employers have an obligation to ensure that their workers are correctly paid for the work they have performed.

If you have not been paid by your employer, you can either:

- Refer the case yourself to a Rights Commissioner under the Payment of Wages Act 1991.
- Sue your employer in the ordinary courts

- Contact your union official who will provide the necessary support, advice and representation.

### **I want to be paid in cash, can I?**

All workers have the right to a “readily negotiable” mode of wage payment, in other words, how you are paid can be changed subject to negotiations. There are many ways in which wages can be paid and include cheque, credit transfer, cash, postal/money order and bank draft.

If you have any difficulties regarding the payment of your wages, it is important that you rectify it immediately. For advice and support you should contact your **union**.

If you are not a member of a union and are interested in finding out more information about the benefits of union membership contact UnionConnect @ 0818 300 900.

### **I work for an agency, do they deal with my pay issues?**

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 directly @ 0818 300 900 for an application form.

### **I don't receive a payslip, what should I do?**

By law, you must get a pay slip or statement of wages from your employer before wage payments are made.

A payslip or statement of wages should be included with your pay cheque. If you are paid by credit transfer, a statement of wages should be provided before the transfer happens.

If you don't receive a payslip or statement of wages you need to ask your employer for one. If this request is refused or ignored you can and should:

- Refer the case to a Rights Commissioner
- Contact your union representative or union official.

### **My salary deductions keep changing, how can I check they are correct?**

It is important to check your payslip or statement of wages each time you are paid to ensure that any deductions made are correct.

Your employer CANNOT make any salary deductions from your wages except where it is stated in law such as PAYE or PRSI deductions, provided for in your **contract of**

**employment** or with your prior consent. All deductions being made (and authorised by you) should be clearly marked on your **payslip**.

If you are unsure about any item on your payslip, contact your employer or payroll department who should be able to explain what the deductions are for.

If you do not receive a satisfactory answer or there are errors on your payslip and your employer is not dealing with it, you should contact your union representation or union official who will be able to assist you.

### **My employer claims that I have been overpaid and wants to take the money out of my wages; is this legal?**

Deductions can legally be made for an act or omission by a worker which includes cash shortages or breakages etc. They can also be made where your employer has given to you, goods or services which are needed for your employment, such as a uniform [with the exception of personal protective equipment].

Deductions of either of these types, can be considered to be authorised as part of your contract of employment. This should be given to you in advance in writing outlining how deductions from wages are handled.

If the employer overpaid you by mistake they can reclaim it, but the amount of the deduction, according to law should be "fair and reasonable", taking all details of the particular circumstances into account.

If the deduction is related to an act or omission by yourself all details should be supplied to you in writing including the amount of the deduction, at least one week before the deduction is made.

Any deductions which may be made, have to be taken no later than 6 months after the act or omission became known to the employer.

If there are a number of deductions to be made, the first one should be made within the 6 month period.

**I broke some glasses in the shop where I work, my employer has taken this out of my wages, should this be allowed?**

Your employer can make deductions from your wages for such things as breakages and till shortages **as long as they comply** with the rules set out. The deduction must;

- arise from an act (breaking the glass) or an omission of the employee OR
- be in respect of the supply of goods or services to the employee by the employer for their employment (such as uniforms).

How deductions are to be made must be clearly set out in your terms of employment contract and the amount deducted must be fair and reasonable (taking into account the circumstances of the individual). In the absence of a formal policy on such deductions, your employer should supply you with the details.

Details of the act (breakage) or omission should be given to you by your employer including the proposed amount to be deducted, at least one week, before the deduction is made.

The amount deducted should not exceed the loss or damaged sustained by your employer.

If you experience problems with the payment of your wages or wage deductions, you should contact your **union representative** immediately who will be able to advise you on this issue.

**My till balance was incorrect a number of times and my employer intends to deduct it from my wages. They also want to fine me, can they do that?**

Yes, your employer can invoke payment of a fine and deduct it with the cost of the product or damage, provided certain conditions have been met [**see previous question**]. If your employer intends to fine you, the details of it should be clearly outlined in the detail of your contract. Contact your local union representative if you have any further questions on this issue.

**Under my contract I am entitled to commission, but my employer hasn't paid any to me in recent months, what can I do?**

There is legislation to protect every worker from non-payment of wages. Wages under the legislation include all of the following:

- 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 otherwise), and
- any sum payable to an employee in lieu of notice of termination of employment.

If you haven't received a payment as part of your wages from your employer, you need to take the complaint first to your employer. If you receive no resolution to the dispute you can either:

- Take your case to a Rights Commissioner
- Seek help & advice from your union representative or union official, who will be able to assist you in assessing the merits of your case.

### **My wages are less than they should be, what should I do?**

If you do not receive your wages or you receive less than the contracted amount, this is an unlawful deduction, except where it was due to a computation error. In this case you should initially take up the issue with your employer. Where there is no satisfactory response or resolution, contact your union representative who will be able to provide you with the necessary support to bring the matter to a satisfactory conclusion.

### **My employer told me that the deductions taken from my wages are not included in the legislation and that it can be deducted legitimately?**

Deductions covered by legislation are set out in the previous section and deal with an act or omission on the part of the employee.

The following deductions lie outside of the complaints procedure of the act and include;

- Statutory deductions – PAYE, PRSI etc
- Deductions paid to a third party – VHI, trade union subscriptions etc
- Deductions to recoup overpayments – this is outside the scope of the Act provided the deduction is not greater than the overpayment amount.
- Deductions for taking part in industrial action
- Statutory disciplinary proceedings – deduction arising from disciplinary proceedings provided the hearings are held by statutory provision.
- Deductions arising from Court orders

If you experience any difficulties with any element of your wage entitlements you should bring the issue, first to the attention of your employer and then to the attention of your union representative. This will ensure your issue gets dealt with effectively.

### **I work in a restaurant and I have been told I am not allowed to keep my tips, is this legal?**

Employments in the services sector operate a range of different policies with regard to the treatment of tips. Some divide tips equally between staff whilst others consider tips as the property of the business.

The fairest way to distribute tips is to do so following consultation with staff. It is advisable to ensure that all staff are members of a union. The union representative will then be able to negotiate a fair and transparent system for dealing with tips, which is agreeable to all staff.

### **I work part-time, should my rate of pay differ from someone who is full-time?**

As a part-time employee you are entitled to receive the same rate of pay as a comparable full-time employee. Therefore, **if you are doing the same or similar work** in comparison with someone in your company or an associated company, you both should receive the same hourly rate of pay.

Obviously gross pay differs depending on hours worked.

If you still feel that the hourly pay differential stems from your part-time status, you should contact your union representative immediately.

### **A colleague of mine is paid a different rate to me, is this legal?**

Differences can occur due to length of service, experience, level of knowledge and expertise. Setting rates of pay take these and other factors into account and are usually agreed during negotiations.

Agreements such as REAs (Registered Employment Agreements) set out the minimum rate of pay for particular industries. Your pay rate may be subject to such agreements if you belong to certain industries. A full list of REA's and the relevant industries can be accessed here [Fiona, I think you have a link already on this?]

If you are unsure as to the reason for a difference in pay, your first action should be to clarify the situation with your employer. Whilst there can always be legitimate reasons for differences, legislation prohibits pay differences solely based on:

- Part-time or fixed term status
- Protected grounds contained in the Employment Equality Act

If you do not receive a satisfactory explanation you should contact your union representative, who will be in a position to resolve any issues.

**I have worked overtime on a number of occasions, but I am not sure if I am getting the correct rate, what should I do?**

There is no employment legislation which specifically covers overtime payments. The Organisation of Working Time Act regulates maximum weekly working hours and breaks but it doesn't cover over-time payment rates.

However, if you work in industries covered by Registered Employment Agreements (REAs) or Joint Labour Committees (JLCs), they may contain legal overtime provisions.

Overtime occurs when an employee works hours in addition to their regular hours, beyond the established time limit which should be set out in your contract of employment. Payment for overtime is regularly negotiated between unions and management, is generally contained within the terms & conditions of your employment and is a multiple of your basic hourly rate.

Examples of overtime payments **could look** like the following:

- 1.25 time & a quarter – from closing to 8pm
- 1.5 time & a half – 8pm to 12 midnight
- Double time – Sundays & public holidays [where the individual is not normally rostered to work]

There are provisions made for Sunday working in the Organisation of Working Time Act 1997. Please contact UnionConnect directly @0818 300 900 for the factsheet on working hours.

***Please note: the above are not actual rates but illustrative examples. For more accurate information please contact your union representative or official who will be able to inform you of the overtime rates which currently operate in your workplace.***

**I wish to take time off, do I get paid?**

Yes, all workers are entitled to annual leave based on their hours of work. For more information on all issues relating to working hours, holidays and public holidays please contact UnionConnect directly @0818 300 900 for the factsheets on working hours and holiday entitlements.

**I am not sure what deductions my employer makes to my wages, who should I ask about this?**

If there are deductions from your wages which you are unsure about, you should talk to your employer directly. Failing to find a resolution to the issue, you should contact your union representative.

**Am I entitled to a payslip?**

Yes and you should ask your employer to provide you with a payslip. If you have any difficulty obtaining a payslip on a regular basis you should contact your union representative to assist you in this matter.

## Minimum Wage

### Is there a minimum hourly wage rate?

Yes, under the National Minimum Wage (2000) Act, there is a minimum hourly rate which should be paid to workers. The amount is currently €8.65 per hour for an experienced adult, although it is subject to change. To keep up to date with this and other workplace issues, log onto our website [www.UnionConnect.ie](http://www.UnionConnect.ie).

### Who is entitled to the minimum wage?

All workers, with some exceptions, are entitled to avail of a minimum wage rate, however these rates differ depending on the length of time you are in employment.

The following are the categories which attract different rates of payment under the minimum wage

- Experienced adult worker (over 18 and with more than 2 years employment experience)
- Under age 18
- Over age 18 and in the 1<sup>st</sup> year of employment since reaching 18
- Over age 18 and in the 2<sup>nd</sup> year of employment since reaching 18
- Over age 18 and in training during normal working hours

An outline of the amounts for each category is given below. If you are in any doubt as to the correct rate of pay which you should be on, contact your union representative immediately. Your union will be able to ensure you are paid correctly for the work that you are doing and will also ensure that your wages are the subject of regular negotiations.

### Is there anyone who doesn't have an entitlement to the National Minimum wage?

Yes, if you are employed by a close relative such as a parent, spouse or sibling, the minimum wage doesn't apply to you.

It also doesn't apply to those in statutory apprenticeships.

However, although in these circumstances you have no statutory entitlement to the minimum wage, as a union member your union will continue to negotiate on your behalf to improve your pay and conditions and ensure you are not exploited.

### I have recently left school and started work, am I entitled to the minimum wage?

The minimum wage of **€8.65** is paid to experienced adult workers. An experienced adult worker is an employee who is not:

- Under 18 years of age
- In the first two years after the date of first employment over age 18 OR
- A trainee undergoing a course that satisfies the conditions which are set out I SI 99 of 2000.

If you don't meet the following criteria please look at the following rates effective since 1st July 2007 outlining the minimum rate per hour for different categories of worker:

- If you are aged under 18 the minimum amount you can be paid per hour is **€6.06**
- If you are in your 1st year after the date of first employment over age 18, the minimum amount you can be paid per hour is **€6.92** (regardless of whether you change employment during the year)

- If you are in your 2nd year after the date of first employment over age 18, the minimum amount you can be paid per hour is **€7.79** (regardless of whether you change employment during the year).
- If you are on training or study undertaken in normal working hours and are over 18 years, you are entitled to the following minimum rates per hour:
  - 1st 1/3 period **€6.49**
  - 2nd 1/3 period **€6.92**
  - 3rd 1/3 period **€7.79**

(Each 1/3 period must be at least 1 month and no longer than 12 months).

Again it should be noted that these are the **minimum payments** allowable under the law. An employer cannot pay below these amounts unless in **exceptional circumstances**.

The legislation does not exclude any employer providing their employees with hourly rates above the minimum. If you are a member of a union, through their collective bargaining and negotiations with you employer, you are more likely to earn more and better pay.

### **I don't know what my hourly rate of pay is, how can I check it?**

Your pay should be stated on your payslip and in some cases the hourly rate will also be displayed.

If this is not the case there is a formula for calculating your hourly rate of pay.

- Take your **gross pay** earned in a particular **reference period**.
- Divide it by **the amount of hours you worked** in that period.
- The average hourly rate of pay obtained must not be less than the minimum hourly rate (currently **€8.65**) of pay to which the employee is entitled.

### **What is included in gross pay?**

For the purpose of calculating the national minimum wage, gross pay includes basic salary, shift premium, bonus or service charge.

### **What is not included in gross pay?**

Element of pay which are not taken into account in the calculation includes:

- Overtime premium
- Call-out premium
- Service pay
- Unsocial hours premium
- Tips which are placed in a central fund managed by the employer and paid as part of your wages
- Premiums for working public holidays, Saturdays or Sundays
- Allowances for special or additional duties
- On-call or standby allowances
- Certain payments in relation to absences from work, for example, sick pay, holiday pay or pay during health and safety leave
- Payment connected with leaving the employment including retirement
- Contributions paid by the employer into any occupational pension scheme available to you

### **Redundancy payments**

- An advance payment of, for example, salary: the amount involved will be taken into account for the period in which it would normally have been paid
- Payment in kind or benefit in kind, other than board and/or lodgings
- Payment not connected with the person's employment

- Compensation for injury or loss of tools
- Award as part of a staff suggestion scheme
- Loan by the employer to you

### **How do I work out the hours which I have worked?**

The hours which you use to calculate the minimum wage can be either (whichever is greater)

- Those set out in your contract, collective agreement or terms and conditions of employment
- Those actually worked or available for work and paid

### **How are my working hours defined?**

Working hours include any hours worked as overtime, travel time where this is part of the job, time spent on training which was authorised by your employer and during normal working hours.

### **What is not included as working hours?**

Time which is not considered part of working hours includes:

- Time spent on standby other than at the workplace
- Time on layoff, strike or after payment in lieu of notice
- Time on leave such as annual leave, sick leave, protective leave, adoptive leave, parental leave
- Time spent travelling to and from work

### **What is a pay reference period?**

The employer selects the period, known as the pay reference period, from which the average hourly pay will be calculated. This might be, for example, on a weekly or fortnightly basis, but cannot be for a period longer than a month.

The employer must include details of the pay reference period in the statement of employment conditions to be given to an employee under the **Terms of Employment (Information) Act 1994**.

You may request a written statement from your employer of your average rate of pay for any pay reference period within the last 12 months. The employer has 4 weeks to supply the statement.

### **Are there exceptional circumstances where my employer can pay me below the minimum wage?**

An experienced adult worker can receive below the minimum wage on a **temporary basis**.

Aside from **training**, for you to be legally paid below the minimum hourly rate, you would have to be named by the Labour Court when granting a temporary exemption to your employer from paying the minimum rate.

The minimum period for the exemption is 3 months and the maximum period allowed is 12 months.

If your employer has requested an exemption from paying the minimum hourly rate to you, you should contact your union representative **immediately** with all the details.

### **I work part-time, am I entitled to the minimum wage?**

Yes, this act applies to full-time, part-time, temporary and casual employees for any hours worked.

### **I have been paid the training rate for a long time, even though I am only getting on the job training, is this allowed?**

For your employer to pay you the **training rate**, you must be taking a course of training or study which meets the following criteria:

- You are taking a course of training or study which is approved by your employer
- The length of the course is for no less than 3 calendar months
- The course takes place during normal working hours [subject to the following]
- The course involves at least 10% of study which may be inside or outside normal working hours.
- Any fees for your participation which are directed by your employer are paid by your employer.
- **The course**
  - Aim is to acquire skills or knowledge to enhance your work performance at the end of the course.
  - Involves directed study or training, workplace training and supervision of you during training in the workplace.
- Should record progress and results to be held on your file, in your workplace, for 3 years after the end of the course
- Should include an assessment and certification procedure or some written confirmation, of your completion of the course identifying your level of attainment against the objectives set out at the beginning. This document should be signed by you.
- The course details must outline:
  - Its title, purpose and objectives
  - Plan of duration and approach
  - Record system to apply
  - Assessment and certification procedure
  - Any advice or facilities provided by your employer to enable you to complete the course or changes in working hours to facilitate completion.

### **I am entitled to a training rate but am not sure which one I should be on?**

To ascertain the correct training rate you need to count the time between the start and end dates of your course of study/ training. This period is then divided into 3 parts. Each must be for a minimum period of one month and a maximum period of 12 months.

**For example:** Training period of 3 years. If you have finished 2 years of training on 25th July when you were under 18, from 26th July you are entitled to be paid €7.79 per working hour because you are in the third year of training.

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