

# Hidden Traps in Employment Law: Unpacking Overlooked Provisions

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**CHAPTER 452****EMPLOYMENT AND INDUSTRIAL RELATIONS ACT**

*To consolidate, with amendments, the Conditions of Employment (Regulation) Act (Cap.135) and the Industrial Relations Act (Cap. 266).*

2nd December, 2002

27th December, 2002

*ACT XXII of 2002, as amended by Acts IX of 2003, III of 2004 and XIX of 2006; Legal Notice 427 of 2007; Acts V of 2009, V of 2011 and XVI of 2012; Legal Notice 426 of 2012; and Acts IV of 2015\* and XXXIII of 2016, XIII of 2018, VI, XXIX of 2019, LVIII of 2020, XX of 2022 and XXXV, XLII and XLIII of 2023, XXXIII of 2024 and XIV, XXXI and XXXVI of 2025.*

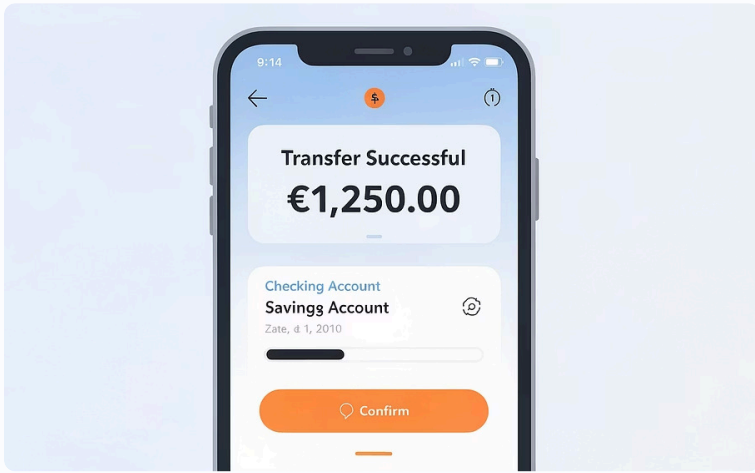
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# The Employment and Industrial Relations Act

\*see also transitory provision in article 20 of Act IV of 2015.

# Payment of Wages



## Question 1

Do wages need to be paid by a bank transfer / electronic transfer?



## Question 2

Must wages **ALWAYS BE PAID** directly to employees?

# Let us look closely at Article 11 of the EIRA

## **Article 11 (1) .....**

Provided further that any wages earned by or payable to a third-country national shall be paid exclusively by means of a bank transfer to an account held in the name of the employee or through an electronic transfer facilitated by an accredited and licensed financial institution. This requirement shall apply to all third-country nationals whose employment commences on 1st October 2025 or subsequently.

(2) Wages shall be paid directly to the employees to whom they are due except as may otherwise be provided by any law or in virtue of an order made by a competent court or where the employee or employees concerned agree to the contrary.

# Deduction from Wages



## Question 1

Is there any instance we *can* not pay our employees?



## Question 2

Or deduct from their salaries?

## Let us look closely at 19(2)

Notwithstanding the provision of sub-article (1), where an employee fails without just cause to give to his employer the total number of hours of work as bound by the terms of any contract of service applicable to him, the employer shall not inflict on the employee any fine for such loss of work but may deduct from the total wages due to the employee that part thereof which corresponds to the work so lost.

- ❏ An employer **may not fine** an employee for lost work — but **may deduct** wages corresponding to the work so lost.

# Work of Equal Value

Does this mean we are ready for the Pay Transparency Directive?



# Let us look closely at Article 27

"Employees in the same class of employment are entitled to the same rate of remuneration for work of equal value:

Provided that an employer and a worker or a union of workers as a result of negotiations for a collective agreement, may agree on different salary scales, annual increments and other conditions of employment that are different for those workers who are employed at different times, where such salary scales have a maximum that is achieved within a specified period of time; and

Provided further that any distinction between classes of employment based on discriminatory treatment otherwise than in accordance with the provisions of this Act or any other law shall be null and of no effect."

# Victimisation and Harassment

Do we only face compensation from an Industrial Tribunal if it is found that we victimised / harassed?



## Key Consideration

The consequences of victimisation and harassment extend beyond compensation awarded by an Industrial Tribunal.



## What Else?

Criminal liability may also arise — see Article 32 for the full picture.

## Let us look closely at Article 32

"Any person contravening the provisions of articles 28 and 29 shall be guilty of an offence and shall be liable on conviction to imprisonment for a term from six months to two years or to a fine (multa) of not less than five thousand euro (€5,000) and not more than ten thousand euro (€10,000), or to both such fine and imprisonment."

€5,000

Minimum Fine

On conviction for contravening Articles 28 and 29

€10,000

Maximum Fine

Or imprisonment from 6 months to 2 years, or both

# Employees on Maternity Leave

Can we terminate an employee (redundancy) if she is out on maternity leave?

36 (5) proviso

"Provided that notice of termination of employment may not be given during maternity leave or during the period of incapacity for work to which sub-article (17) refers or during such other period as the Minister may prescribe."

But wait... Let us look at Article 12 (1) and (2) of the Protection Of Maternity (Employment) Regulations

36 (17)

"A whole-time female employee shall not be dismissed by the employer during the period of her maternity leave or the period of five weeks following the end of such leave in which she is incapable for work owing to a pathological condition arising out of delivery."

36 (18)

"Any period of incapacity for work referred to in the last preceding sub-article shall be deducted from the period of sick leave to which the employee is entitled at the time of such incapacity, so however that the period of incapacity which exceeds such entitlement shall be deemed to be leave of absence without entitlement to wages:  
Provided that the employer may require the employee to produce evidence of such incapacity for work and may require his own doctor to visit such employee and to report to him on the condition of her health."



## Good and Sufficient Cause

We lost trust and confidence in one of our employees. Surely this is a good and sufficient cause. Is it?

- ❑ Many employers assume that a breakdown in trust and confidence automatically constitutes good and sufficient cause for dismissal. The EIRA tells a different story.

## Let us look closely at Article 36 (14) (b)

"Provided further that an employer may not set up as a good and sufficient cause –

(b) except in the case of a private domestic employee, that the employee no longer enjoys the employer's confidence;"

📌 **Key takeaway:** Loss of confidence is **not** a good and sufficient cause for dismissal — except in the case of a private domestic employee.

# What about terminating those who reach pensionable age?

Let us look closely at Article 36 (14) (a):

"Provided further that:

Cap. 318. (a) saving the provisions of paragraph (b) hereof, the employer can terminate the employment of an employee when the employee reaches pension age as defined in the Social Security Act;"

- ❑ Reaching **pension age** as defined in the Social Security Act **does** constitute a valid ground for termination of employment.





## Do we have to provide a reference?

Let us look closely at Article 41:

"On the termination of a contract of service lasting over one month, the employer shall be bound, at the employee's request, to give him a certificate stating the duration of the employment, the nature of the work or services performed and, if the employee so desires, the reason for the termination of the contract, and the rate of wages paid:

Provided that the employer shall not be required to state the reason of termination of employment, if the employment was terminated during probation."

# Avoiding Redundancies

What article of the EIRA did we use during COVID? Can we still use it now?

Let us look closely at Article 42

"Unless in such case as is otherwise provided by this Act, if a contract of service between an employee and his employer or a collective agreement entered into between the employer and the recognised union representatives, provides for any conditions of employment, including conditions relating to the termination of the contract, less favourable to the employee than those specified in or under this Act, they shall have effect as if for those conditions less favourable to the employee there were substituted the conditions specified in or under this Act:

Provided that, in exceptional cases, the employer in agreement with the employee or union representatives may provide for different conditions of employment than those specified in or under this Act as long as such agreement is a temporary measure to avoid redundancies and as long as it is approved by the Director, which approval needs to be reviewed every four weeks."

# Punishments

## Key Questions

What are the punishments now since the increase in 2025?

And what is the time limit for offences committed?

Let us look closely at **Article 45 (1)** and **Article 47**

"Any employer who contravenes or fails to comply with any recognised conditions of employment prescribed by a national standard order or by a sectoral regulation order or collective agreement, or with any provisions of this Act or any regulations made thereunder shall, unless a different punishment is established for such offence, on conviction be liable to a fine (multa) of not less than two thousand euro (€2,000) and not exceeding five thousand euro (€5,000): Provided that if the employer is found guilty for the second time or more thereafter of breaching any condition and, or provision mentioned in sub-article (1), the fine (multa) shall be of not less than five thousand euro (€5,000) and not exceeding seven thousand euro (€7,000)."

## €2,000

Minimum Fine (1st offence)

Up to €5,000 for first-time breach

## €5,000

Minimum Fine (repeat)

Up to €7,000 for second offence or more

# Transparent and Predictable Working Conditions Regulations

Remember the introduction of Article 5 A and let us also look closely at Article 10:

"No condition of employment can be modified or amended after the commencement of employment, unless such modification or amendment is a result of a change in laws, regulations or a collective agreement regulating the place of work or, without prejudice to the generality of the foregoing, a result of the application of the proviso to article 42 of the Act."

- ❑ Employers cannot unilaterally modify employment conditions post-commencement — changes must stem from **law, regulation, collective agreement**, or the **Article 42 proviso**.





# The Work-Life Balance for Parents and Carers Regulations, 2022

Do we have to agree to the a request of flexible working?

Let us look at Article 10:

"(1) Workers with children up to the age of eight (8) years, and carers, have the right to request flexible working arrangements for caring purposes:

Provided that flexible working arrangements may be limited in duration:

Provided further that when flexible working arrangements are limited in duration, the worker shall have the right to request to return to the original working pattern before the end of the agreed period where justified on the basis of a change in circumstances. The employer shall consider and respond to a request for an early return to the original working pattern, taking into account the needs of both the employer and the worker.

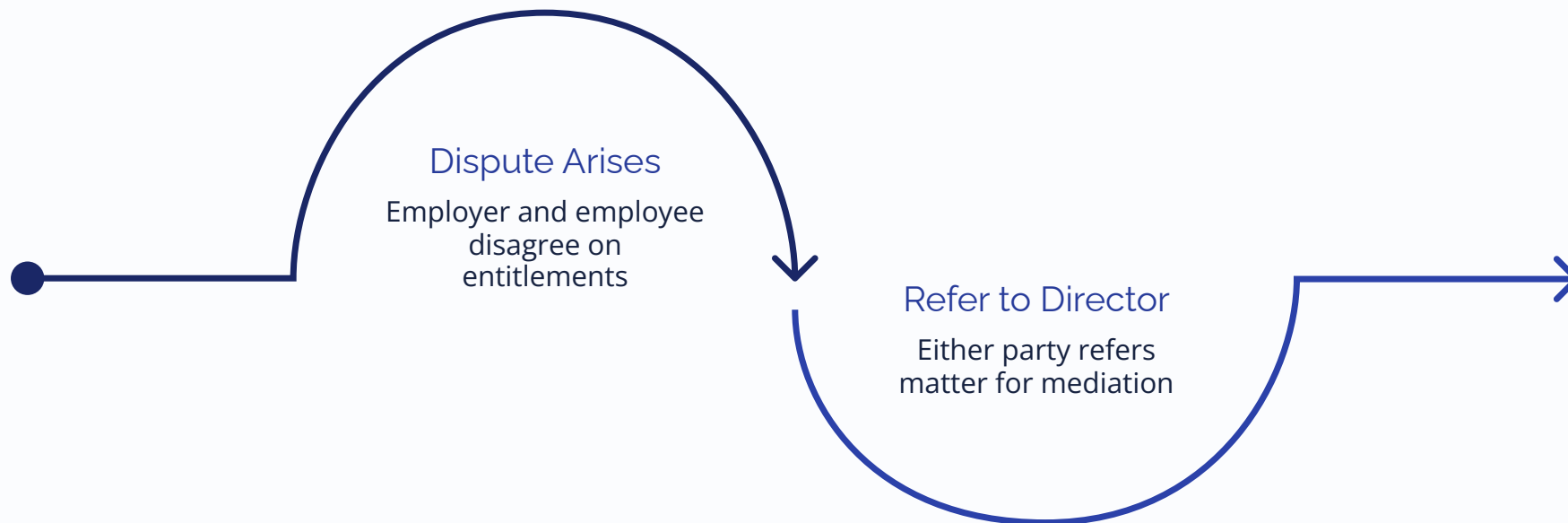
(2) In these regulations flexible working arrangements may include but are not limited to, remote working, work on reduced hours, and flexitime.

(3) Employers shall consider and respond to requests for flexible working arrangements within two (2) weeks, providing reasons for any refusal of such requests or for any postponement of such arrangements."

# And if a dispute arises.....

Article 15:

"Should a dispute arise between an employer and an employee regarding the entitlements covered by these regulations or any related matter, then either the employer or the employee may refer the matter to the Director General of Employment and Industrial Relations who shall mediate between the parties."



Either party — employer or employee — may initiate the referral to the Director General of Employment and Industrial Relations for mediation.



HIDDEN TRAPS IN EMPLOYMENT LAW

UNPACKING OVERLOOKED PROVISIONS

Thank you.

