

The IPASS Book

20th Edition

The Ultimate Guide to Payroll and Employment Law in Ireland

Author: **Ciaran Doherty**

Editor: **Gerard Byrne**

Published by:
Irish Payroll Association,
9 Western Parkway Business Centre,
Ballymount Drive,
Dublin 12,
D12 K259.

Phone: (01) 4089 100

Email: ask@ipass.ie

Website: www.ipass.ie

First edition published 2004

Edition 20: 2023

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The purpose of this book is to outline in practical terms the operation of payroll in Ireland and to explain the main aspects of employment law as it affects both employers and employees.

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ISBN 978-0-9928434-8-9

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The Irish Payroll Association (IPASS) is the leading provider of payroll qualifications, training, and consultancy in Ireland. The aims of IPASS are to train, develop and support the payroll profession. We recognise the importance of the payroll function in every business, a function which is vastly under appreciated by many employers, and which is often taken for granted.

Working in payroll today means being proficient in the use of information technology, in accounting and HR issues, in addition to being up to date with legislation and practice in relation to taxation, social welfare and employment law, all of which are constantly changing. The function of the payroll office is very demanding, highly technical and stressful. Yet who can managers and staff working in payroll turn to, when they need assistance with payroll specific problems? The answer is IPASS.

In addition to providing education, training and support for payroll staff, our aim is to help the payroll function to develop in order to achieve the recognition which it deserves. We intend to achieve these aims by providing a range of services and products which include educational qualifications and seminars, an annual payroll conference, representation to Government Departments and to employers, products and services to help students, associates and members to enhance payroll operations, to meet new legislative requirements and to address changes in the workplace.

To promote the standards required to work in payroll, we provide a number of payroll qualifications, so that payroll personnel have a standard by which they can be evaluated. Information in respect of the Certificate in Payroll Techniques and the IPASS Professional Diploma in Payroll Management qualifications is available on our website. These courses are available nationwide by classroom and online learning.

However, even if you do not wish to study for a qualification, the IPASS still has much to offer through its personal and corporate membership scheme. The benefits of IPASS membership include a telephone helpline, an electronic newsletter, discounts on courses and services provided by IPASS, professional development, an annual payroll conference, the opportunity to meet and network with other payroll professionals, membership of a body which makes regular representation to Government Departments and bodies and much more.

Further information on the IPASS payroll qualifications, training courses, personal and corporate membership schemes, may be obtained from:

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Ballymount Drive,
Dublin 12,
D12 K259.

Phone: (01) 4089 100

Email: ask@ipass.ie

Website: www.ipass.ie

Acknowledgement

The Irish Payroll Association wishes to acknowledge the invaluable assistance provided in the preparation of this book by the Revenue Commissioners, the Department of Social Protection, Department of Enterprise, Trade and Employment, the Workplace Relations Commission, the Pensions Authority, the Irish Human Rights and Equality Commission, the Central Statistics Office and our Payroll Consultants, Maria Lacey and Ann Geraghty.

Foreword

PAYE, PRSI and USC combined are the single largest source of revenue which the Irish Government receives and the single largest tax liability which most companies have to pay. Yet remarkably, the management and administration of the payroll function is usually left to staff with inadequate training and with little or no support.

Most employers seem to rely on the fact that they use dedicated payroll software, yet blind faith in any software package is a dangerous thing. The best payroll software available is simply a tool for payroll staff and it cannot operate efficiently without the input of properly trained and qualified staff, who are fully up to date with the changes in law and practice in relation to the operation of the PAYE system and Employment Law.

It is ironic that the single largest tax liability that most companies have is the most neglected area in terms of training and support, a fact which is borne out by the fact that The IPASS Book is the only book of its kind published in Ireland.

The IPASS Book combines details of the operation of the PAYE system together with an explanation of the most important aspects of Employment Law, which affect payroll. It is designed not only to provide detailed information, but also to supply answers to some of the most common problems and questions which arise in every payroll department.

The IPASS Book is updated annually to ensure that payroll personnel have access to the most up to date and complete information available to assist them in their work. The book is written in non-technical language and seeks to explain in simple terms the workings and the mysteries of PAYE, PRSI and USC and the most important aspects of Employment Law which affect both employers and employees.

I believe that The IPASS Book is an invaluable aid to payroll managers and staff, HR managers and employees.

Ciaran Doherty
Director
Irish Payroll Association

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Glossary of Terms and Abbreviations

AEO	Attachment of Earnings Order
ASC	Additional Superannuation Contribution - payable by certain public servants
AVC	Additional Voluntary Contribution is a voluntary contribution made by an employee to a pension scheme, in excess of any standard contribution provided for in the contract of employment
APSS	Approved Profit Sharing Scheme
BIK	Benefit in Kind
COP	Cut-Off Point
DETE	Department of Enterprise, Trade and Employment
DSP	Department of Social Protection
EEA	European Economic Area
ESPP	Employee Share Purchase Plan
Gross Pay	An employee's total pay (to include the notional value of non-cash benefits) before any deductions are made by the employer
Income Tax	
Year	Calendar year from 1 st January to 31 st December
LPT	Local Property Tax
myAccount	Single access point to secure online services for PAYE taxpayers
Net Pay	The amount of money taken home by an employee after all deductions have been made
Notional Pay	The value of any non-cash benefit or perquisite which must be included in an employee's gross pay
PAYE	Pay As You Earn
Payroll	
Submission	Return by employer of pay and statutory deductions in respect of each employee for each pay period
PEPP	Pan-European Personal Pension Product
PHI	Permanent Health Insurance
PPSN	Personal Public Service Number
PRSA	Personal Retirement Savings Account
PRSI	Pay Related Social Insurance
RAC	Retirement Annuity Contract (also referred to as a private pension)
Reckonable Earnings	For employee PRSI purposes, is an employee's gross pay including the notional value of a benefit-in-kind, less any Revenue approved salary sacrifice. For employer PRSI purposes, reckonable earnings are reduced by ASC payable by a public servant and the amount of any share based remuneration.
ROS	Revenue Online Service for business taxpayers
RPN	Revenue Payroll Notification - Employer copy of an Employee's Tax Credit and USC Certificate
RSU	Restricted Stock Unit
SRCOP	Standard Rate Cut-Off Point. This is the amount of income an individual can earn which is liable to tax at the standard rate. Any income in excess of this amount is liable to tax at the higher (marginal) rate
SCSB	Standard Capital Superannuation Benefit
SSL	Statutory Sick Leave

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SSP	Statutory Sick Pay
Tax Credit Certificate	Employee's copy of his Tax Credit and USC Certificate
Taxable Pay	An employee's gross pay less certain deductions approved by Revenue which are allowable for tax purposes, such as contributions to a Revenue approved pension scheme, PHI scheme or deductions under a Revenue approved salary sacrifice
TDC	Tax Deduction Card
USC	Universal Social Charge
WRC	Workplace Relations Commission

Reference Tables and Charts

1. Weekly and Monthly Tax Calendar for 2023

<i>Week No.</i>	<i>Pay day between (both days inclusive)</i>	<i>Week No.</i>	<i>Pay day between (both days inclusive)</i>
1	1 st January to 7 th January	27	2 nd July to 8 th July
2	8 th January to 14 th January	28	9 th July to 15 th July
3	15 th January to 21 st January	29	16 th July to 22 nd July
4	22 nd January to 28 th January	30	23 rd July to 29 th July
5	29 th January to 4 th February	31	30 th July to 5 th August
6	5 th February to 11 th February	32	6 th August to 12 th August
7	12 th February to 18 th February	33	13 th August to 19 th August
8	19 th February to 25 th February	34	20 th August to 26 th August
9	26 th February to 4 th March	35	27 th August to 2 nd September
10	5 th March to 11 th March	36	3 rd September to 9 th September
11	12 th March to 18 th March	37	10 th September to 16 th September
12	19 th March to 25 th March	38	17 th September to 23 rd September
13	26 th March to 1 st April	39	24 th September to 30 th September
14	2 nd April to 8 th April	40	1 st October to 7 th October
15	9 th April to 15 th April	41	8 th October to 14 th October
16	16 th April to 22 nd April	42	15 th October to 21 st October
17	23 rd April to 29 th April	43	22 nd October to 28 th October
18	30 th April to 6 th May	44	29 th October to 4 th November
19	7 th May to 13 th May	45	5 th November to 11 th November
20	14 th May to 20 th May	46	12 th November to 18 th November
21	21 st May to 27 th May	47	19 th November to 25 th November
22	28 th May to 3 rd June	48	26 th November to 2 nd December
23	4 th June to 10 th June	49	3 rd December to 9 th December
24	11 th June to 17 th June	50	10 th December to 16 th December
25	18 th June to 24 th June	51	17 th December to 23 rd December
26	25 th June to 1 st July	52	24 th December to 30 th December
		53	31 st December where it is a payday

<i>Month No.</i>	<i>Month Ended</i>	<i>Month No.</i>	<i>Month Ended</i>
1	31 st January	7	31 st July
2	28 th February	8	31 st August
3	31 st March	9	30 th September
4	30 th April	10	31 st October
5	31 st May	11	30 th November
6	30 th June	12	31 st December

2. Important Payroll Dates for 2023

January	1 st	Public Holiday and SEPA Holiday
	14 th	Return due date for December
	21 st	Pension deductions from December to be remitted to pension scheme
	23 rd	Payment due date for December and for Quarter October to December
February	6 th	Public Holiday
	14 th	Return due date for January
	15 th	Notify Revenue of tax exempt payments (death or disability) paid in 2022
	21 st	Pension deductions from January to be remitted to pension scheme
	23 rd	Employer SARP Return due date for 2022
	23 rd	Payment due date for January
	28 th	Deadline to recover tax liabilities paid on benefit provided to an employee to avoid a further taxable benefit arising
March	14 th	Return due date for February
	17 th	Public Holiday
	21 st	Pension deductions from February to be remitted to pension scheme
	23 rd	Payment due date for February
	31 st	Deadline for submitting ESA, RSS1, ESS1, SRS01, KEEP1 and ESOT1
	31 st	Deadline for claiming separate assessment for 2023
	31 st	Deadline for nominating assessable spouse for 2023
April	7 th	SEPA Holiday
	10 th	Public Holiday and SEPA Holiday
	14 th	Return due date for March
	21 st	Pension deductions from March to be remitted to pension scheme
	23 rd	Payment due date for March and for Quarter January to March
May	1 st	Public Holiday and SEPA Holiday
	14 th	Return due date for April
	21 st	Pension deductions from April to be remitted to pension scheme
	23 rd	Payment due date for April
June	5 th	Public Holiday
	14 th	Return due date for May
	21 st	Pension deductions from May to be remitted to pension scheme
	23 rd	Payment due date for May
July	14 th	Return due date for June
	21 st	Pension deductions from June to be remitted to pension scheme
	23 rd	Payment due date for June and for Quarter April to June
August	7 th	Public Holiday
	14 th	Return due date for July
	21 st	Pension deductions from July to be remitted to pension scheme
	23 rd	Payment due date for July
September	14 th	Return due date for August

	21 st	Pension deductions from August to be remitted to pension scheme
	23 rd	Payment due date for August
October	14 th	Return due date for September
	21 st	Pension deductions from September to be remitted to pension scheme
	23 rd	Payment due date for September and for Quarter July to September
	30 th	Public Holiday
November	14 th	Return due date for October
	21 st	Pension deductions from October to be remitted to pension scheme
	23 rd	Payment due date for October
December	14 th	Return due date for November
	21 st	Pension deductions from November to be remitted to pension scheme
	23 rd	Payment due date for November
	25 th	Public Holiday and SEPA Holiday
	26 th	Public Holiday and SEPA Holiday

3. Income Tax Rates

Tax year	Standard Rate	Higher Rate
2019 - 2023	20%	40%

4. Standard Rate Cut Off Points

	%	2023	2022	2021	2020	2019
Single/Widowed person or Surviving Civil Partner	20	First €40,000	First €36,800	First €35,300	First €35,300	First €35,300
	40	Balance	Balance	Balance	Balance	Balance
Single/Widowed person qualifying for the Single Person Child Carer Tax Credit	20	First €44,000	First €40,800	First €39,300	First €39,300	First €39,300
	40	Balance	Balance	Balance	Balance	Balance
Married Couple or Civil Partnership - one income	20	First €49,000	First €45,800	First €44,300	First €44,300	First €44,300
	40	Balance	Balance	Balance	Balance	Balance
Married Couple or Civil Partnership - two incomes	20	First €49,000 with an increase of up to a maximum of €31,000	First €45,800 with an increase of up to a maximum of €27,800	First €44,300 with an increase of up to a maximum of €26,300	First €44,300 with an increase of up to a maximum of €26,300	First €44,300 with an increase of up to a maximum of €26,300
	40	Balance	Balance	Balance	Balance	Balance

5. Tax Credits

	2023	2022	2021	2020	2019
Single/Widowed Person or Surviving Civil Partner Tax Credit	€1,775	€1,700	€1,650	€1,650	€1,650
Married Couple or Civil Partnership Tax Credit	€3,550	€3,400	€3,300	€3,300	€3,300
Widowed Person or Surviving Civil Partner in year of bereavement	€3,550	€3,400	€3,300	€3,300	€3,300
Widowed Person or Surviving Civil Partner - Additional relief for subsequent years after year of bereavement					
- With no qualifying children	€540	€540	€540	€540	€540
- With qualifying children					
- first year after bereavement	€3,600	€3,600	€3,600	€3,600	€3,600
- second year after bereavement	€3,150	€3,150	€3,150	€3,150	€3,150
- third year of bereavement	€2,700	€2,700	€2,700	€2,700	€2,700
- fourth year after bereavement	€2,250	€2,250	€2,250	€2,250	€2,250
- fifth year after bereavement	€1,800	€1,800	€1,800	€1,800	€1,800
Single Person Child Carer Tax Credit	€1,650	€1,650	€1,650	€1,650	€1,650
PAYE Tax Credit	€1,775	€1,700	€1,650	€1,650	€1,650
Home Carer Tax Credit	€1,700	€1,600	€1,600	€1,600	€1,500
Age Tax Credit - Single/Widowed Person or Surviving Civil Partner	€245	€245	€245	€245	€245
Age Tax Credit – Married Couple or Civil Partnership	€490	€490	€490	€490	€490
Blind Person Tax Credit					
- Single Person, or one Spouse or Civil Partner blind	€1,650	€1,650	€1,650	€1,650	€1,650
- Both Spouses / Civil Partners blind	€3,300	€3,300	€3,300	€3,300	€3,300
- Allowance for guide dog*	€825	€825	€825	€825	€825
Incapacitated Child Tax Credit	€3,300	€3,300	€3,300	€3,300	€3,300
Dependent Relative Tax Credit	€245	€245	€245	€70	€70
Earned Income Tax Credit	€1,775	€1,700	€1,650	€1,650	€1,350
Fisher Tax Credit	€1,270	€1,270	€1,270	€1,270	€1,270
Sea-going Naval Personnel Credit	€1,500	€1,500	€1,500	€1,270	-
Rent Tax Credit – Single Person	€500	€500			
Rent Tax Credit – Married Couple or Civil Partnership	€1,000	€1,000			

* Allowance for guide dog is standard rated.

6. USC Rates and Cut-Off Points

Standard Rates		2023	2022	2021	2020	2019
Exemption Limit		€13,000	€13,000	€13,000	€13,000	€13,000
First	0.5%	€12,012	€12,012	€12,012	€12,012	€12,012
Next	2%	€10,908	€9,283	€8,675	€8,472	€7,862
Next	4.5%	€47,124	€48,749	€49,357	€49,560	€50,170
Balance	8%	Balance	Balance	Balance	Balance	Balance

Reduced Rates		2023	2022	2021	2020	2019
Exemption Limit		€13,000	€13,000	€13,000	€13,000	€13,000
First	0.5%	€12,012	€12,012	€12,012	€12,012	€12,012
Balance	2%	Balance	Balance	Balance	Balance	Balance

The Reduced USC Rates apply to medical card holders or people aged 70 or over, if the individual's total annual income for USC purposes does not exceed €60,000.

7. Emergency Basis of Tax and USC

Where an employee provides his employer with his PPSN:

	Weekly Paid		Monthly Paid	
	Weeks 1 - 4	Weeks 5 +	Month 1	Month 2+
SRCP	€770	€0	€3,334	€0
Tax Credit	€0	€0	€0	€0

Where an employee does not provide his PPSN, tax at the higher rate of 40% applies to all earnings.

8% USC applies under the Emergency Basis with no USC COPs, regardless of whether an employee provides his employer with his PPSN, or not.

8. Pension, PRSA or PEPP Tax Allowable Contribution Limits

The maximum amount of tax relief that can be claimed on pension contributions is based on the following table, subject to overall relevant earnings limit of €115,000.

Age	Limits
Age up to 30 years	15% of relevant earnings
30 but less than 40	20% of relevant earnings
40 but less than 50	25% of relevant earnings
50 but less than 55	30% of relevant earnings
55 but less than 60	35% of relevant earnings
60 years and over	40% of relevant earnings

9. PRSI Class A Rates

Year	Employer		Employee	
	<i>Contribution</i>	<i>Income Limit</i>	<i>Contribution</i>	<i>Income Limit</i>
2023	11.05% or 8.8%	No limit	4%	N/A
2022	11.05% or 8.8%	No limit	4%	N/A
2021	11.05% or 8.8%	No limit	4%	N/A
2020	11.05% or 8.8%	No limit	4%	N/A
2019	10.95% or 8.7%	No limit	4%	N/A

10. ASC Rates and Threshold

ASC Rates and Thresholds for **2020** to **2023** depending on which pension scheme the Public Servant is a member of:

Rate of ASC	Standard Accrual Pension Scheme	Single Public Service Pension Scheme	Fast Accrual Pension Scheme
Exempt	First €34,500	First €34,500	First €28,750
3.33%	N/A	Next €25,500	N/A
3.5%	N/A	Balance	N/A
10%	Next €25,500	N/A	Next €31,250
10.5%	Balance	N/A	Balance

ASC Rates and Thresholds for **2019** depending on which pension scheme the Public Servant is a member of:

Rate of ASC	Standard Accrual Pension Scheme	Single Public Service Pension Scheme	Fast Accrual Pension Scheme
Exempt	First €32,000	First €32,000	First €28,750
6.66%	N/A	Next €28,000	N/A
7%	N/A	Balance	N/A
10%	Next €28,000	N/A	Next €31,250
10.5%	Balance	N/A	Balance

11. PRD Rates and Thresholds

The PRD was replaced by the ASC for 2019 and subsequent years.

Rate of PRD	2018	2017	2016	2015
0%	First €28,750	First €28,750	First €26,083	First €17,500
2.5%	N/A	N/A	N/A	Next €2,500
5%	N/A	N/A	N/A	N/A
10%	Next €31,250	Next €31,250	Next €33,917	Next €40,000
10.5 %	Balance	Balance	Balance	Balance

12. Benefit in Kind – Employer Provided Vehicles

Electric Vehicles

BIK applies to electric vehicles (cars and vans) in the same manner as mechanically propelled vehicles. However, the Original Market Value (OMV) of electric vehicles should be reduced as follows for the purpose of calculating the BIK:

Tax Year	2023	2024	2025
Reduction in OMV	€35,000	€20,000	€10,000

Company Cars

The rate of BIK for a full year in which an employer provided car is available to an employee for private use is dependent on the number of business kilometres travelled in the year and the CO₂ emissions of the car. The taxable BIK equals the OMV of the car multiplied by the appropriate % as outlined in the table below, less any employee contribution.

For 2023, the OMV of all cars falling into categories A to D in the table below (i.e. cars with CO₂ emissions below 180 g/km) should be reduced by €10,000. For electric cars, this €10,000 reduction is in addition to the €35,000 reduction in OMV as outlined above, hence a total reduction in OMV of €45,000 for 2023.

Benefit in Kind - Company Car 2023					
Annual Business Travel (kms)	Vehicle Categories - CO ₂ emissions (g per km)				
	A	B	C	D	E
	<= 59g/km	60 - 99g/km	100 - 139g/km	140 - 179g/km	180g/km +
	% of Original Market Value (as reduced *)				
Up to 26,000	22.5	26.25	30	33.75	37.5
26,001 - 39,000	18	21	24	27	30
39,001 - 48,000	13.5	15.75	18	20.25	22.5
48,001 or over	9	10.5	12	13.5	15

* Reduce OMV of electric car by €45,000 before calculating BIK
 * Reduce OMV of Category A - D cars (excl. electric cars) by €10,000 before calculating BIK

Company Van

The rate of BIK for a full year in which a company van is available to an employee for private use is 8% of the OMV of the van, less any employee contribution. There is no reduction in the rate of BIK based on the annual business travel. The OMV of an electric van can be reduced as outlined above before calculating the BIK. For 2023, the OMV of a mechanically propelled van can be reduced by €10,000 and the OMV of an electric van can be reduced by a total of €45,000 (€35,000 + €10,000) before calculating the BIK.

Company Motorcycle

The rate of BIK for a full year in which an employee has private use of an employer provided motorcycle is 5% of the market value of the motorcycle when it was first provided to any employee, plus any other annual running costs incurred by the employer, less any employee contribution.

13. Civil Service Motor Travel Rates
Car or Van Rates since 1st September 2022:

Rates per kilometre:	Engine up to 1200cc*	1201cc to 1500cc	1501cc+
First 1,500 kms	41.80 cent	43.40 cent	51.82 cent
1,501 – 5,500 kms	72.64 cent	79.18 cent	90.63 cent
5,501 – 25,000 kms	31.78 cent	31.79 cent	39.22 cent
25,001 kms and over	20.56 cent	23.85 cent	25.87 cent

* This rate can be paid to those employees who drive their electric car on business travel.

Motorcycle Rates:

Rates per kilometre:	Engine up to	151cc to	251cc to	601cc and over
	150cc	250cc	600cc	
First 6,437 km	14.48 cent	20.10 cent	23.72 cent	28.59 cent
6,438 km and over	9.37 cent	13.31 cent	15.29 cent	17.60 cent

Bicycle Rates:

8 cent per kilometre

14. Civil Service Subsistence Rates

Subsistence Rates since 1st September 2022:

Normal Rate	24 Hour Allowance			Daily Allowances	
	Reduced Rate	Detention Rate		5 to 10 hours	Over 10 hours
€167.00	€150.30	€83.50		€16.29	€39.08

Vouched Accommodation Rate – For use in Dublin Only

Accommodation		Meals
Vouched cost of accommodation up to a maximum of €167.00	Plus	€39.08

15. Summary of PRSI Classes
Rates applicable for 2023

Private/Public Sector Employments						
Class A	Weekly Earnings Band	Fortnightly Earnings Band	Monthly Earnings Band	How Much of Earnings		All Income
Record under JO	€0 - €37.99 incl.	€0 - €75.99 incl.	€0 - €164.99 incl.	All All	Employer Employee	0.5% Nil
AO	€38 - €352 incl.	€76 - €704 incl.	€165 - €1,525 incl.	All All	Employer Employee	8.8% Nil
AX*	€352.01 – €424 incl.	€704.01 – €848 incl.	€1,525.01 – €1,837 incl.	All All	Employer Employee	8.8% 4%
AL	€424.01 - €441 incl.	€848.01 - €882 incl.	€1,837.01 - €1,911 incl.	All All	Employer Employee	8.8% 4%
A1	In excess of €441	In excess of €882	In excess of €1,911	All All	Employer Employee	11.05% 4%

* PRSI credit applies

People within Class A

People in industrial, commercial, and service type employment who are employed under a contract of employment with reckonable earnings of €38 or more per week from all employments and Public Servants recruited since 6th April 1995.

Community Employment Participants Only						
A8	€38 - €352 incl.	€76 - €704 incl.	€165 - €1,525 incl.	All All	Employer Employee	0.5% Nil
A9*	In excess of €352	In excess of €704	In excess of €1,525	All All	Employer Employee	0.5% 4%

*PRSI credit applies on earnings up to €424 per week, €848 per fortnight or €1,837 per month.

Private / Public Sector Employments						
Class J	Weekly Earnings Band	Fortnightly Earnings Band	Monthly Earnings Band	How Much of Earnings		All Income
JO	Up to €500	Up to €1,000	Up to €2,167	All All	Employer Employee	0.5% Nil
J1	In excess of €500	In excess of €1,000	In excess of €2,167	All All	Employer Employee	0.5% Nil
J9	SOLAS Allowance	SOLAS Allowance	SOLAS Allowance	All All	Employer Employee	0.5% Nil

People within Class J

Class J applies to people with reckonable earnings of less than €38 per week from all employments. A small number of employees are insurable at Class J regardless of the amount of earnings: employees aged 66 years or over, or people employed in a subsidiary employment. Class J9 applies to the SOLAS allowance paid to those training in SOLAS training centres.

Office Holders						
Class K	Weekly Income Band	Fortnightly Earnings Band	Monthly Income Band	How Much of Income		All Income
Record under Class M	Up to €100	Up to €200	Up to €433	All All	Employer Employee	Nil Nil
K1	In excess of €100	In excess of €200	In excess of €433	All All	Employer Employee	Nil 4%

People within Class K

Class K applies to income deriving from positions of certain public office holders (President, Taoiseach, Tánaiste, Ministers of State, Members of either House of the Oireachtas, a member of the European Parliament for a constituency in Ireland, a member of the judiciary, Attorney General, Comptroller and Auditor General).

Class K (without the threshold of €100 per week) also applies to:

- The reckonable emoluments or reckonable income of a modified rate (Class B, C or D) contributor, and
- The unearned income of an employee or occupational pensioner (aged 16 to 65 inclusive) who has no income from a trade or profession, if that person is a chargeable person for tax purposes.

Occupational Pensions						
Class M	Weekly Income Band	Fortnightly Earnings Band	Monthly Income Band	How Much of Income		All Income
Class M	All Income	All Income	All Income	All All	Employer Employee	Nil Nil

People within Class M

Class M should be used for people with a NIL contribution liability (e.g. people in receipt of an occupational pension, a lump sum termination payment, employees under 16 years of age, and income of people aged 66 years or over which was previously liable for PRSI under Class S).

Self Employed (On PAYE System only)						
Class S	Weekly Income Band	Fortnightly Earnings Band	Monthly Income Band	How Much of Income		All Income
SO	Up to €500	Up to €1,000	Up to €2,167	All	Employer S/E	Nil 4%
S1	In excess of €500	In excess of €1,000	In excess of €2,167	All	Employer S/E	Nil 4%

People within Class S

Self-employed people; certain company directors and certain individuals in receipt of rental or investment income; County, City and Town Councillors are insurable under Class S (previously Class K).

Public Sector Employments

Class B	Weekly Earnings Band	Fortnightly Earnings Band	Monthly Earnings Band	How Much of Earnings		All Income
BO	Up to €352 incl.	Up to €704 incl.	Up to €1,525 incl.	All All	Employer Employee	2.01% Nil
BX	€352.01 - €500 incl.	€704.01 - €1,000 incl.	€1,525.01 - €2,167 incl.	All All	Employer Employee	2.01% 0.9%
B1	In excess of €500	In excess of €1,000	In excess of €2,167	All First €1,443 per week, €2,886 per fortnight or €6,253 per month Balance	Employer Employee Employee	2.01% 0.9% 4%

People within Class B

Class B applies to permanent and pensionable civil servants, Gardaí and registered doctors and dentists employed in the Civil Service, who were recruited before 6th April 1995.

Class C	Weekly Earnings Band	Fortnightly Earnings Band	Monthly Earnings Band	How Much of Earnings		All Income
CO	Up to €352 incl.	Up to €704 incl.	Up to €1,525 incl.	All All	Employer Employee	1.85% Nil
CX	€352.01 - €500 incl.	€704.01 - €1,000 incl.	€1,525.01 - €2,167 incl.	All All	Employer Employee	1.85% 0.9%
C1	In excess of €500	In excess of €1,000	In excess of €2,167	All First €1,443 per week, €2,886 per fortnight or €6,253 per month Balance	Employer Employee Employee	1.85% 0.9% 4%

People within Class C

Class C applies to commissioned army officers and members of the army nursing service recruited before 6th April 1995.

Class D	Weekly Earnings Band	Fortnightly Earnings Band	Monthly Earnings Band	How Much of Earnings		All Income
DO	Up to €352 incl.	Up to €704 incl.	Up to €1,525 incl.	All All	Employer Employee	2.35% Nil
DX	€352.01 - €500 incl.	€704.01 - €1,000 incl.	€1,525.01 - €2,167 incl.	All All	Employer Employee	2.35% 0.9%
D1	In excess of €500	In excess of €1,000	In excess of €2,167	All First €1,443 per week, €2,886 per fortnight or €6,253 per month Balance	Employer Employee	2.35% 0.9% 4%

People within Class D

Class D applies to permanent and pensionable employees in the public service, other than those mentioned in Classes B and C, recruited before 6th April 1995.

Class H	Weekly Earnings Band	Fortnightly Earnings Band	Monthly Earnings Band	How Much of Earnings		All Income
HO	Up to €352 incl.	Up to €704 incl.	Up to €1,525 incl.	All All	Employer Employee	10.35% Nil
HX*	€352.01 - €424 incl.	€704.01 - €848 incl.	€1,525.01 - €1,837 incl.	All All	Employer Employee	10.35% 3.9%
H1	In excess of €424	In excess of €848	In excess of €1,837	All All	Employer Employee	10.35% 3.9%

* PRSI credit applies

People within Class H

Class H applies to non-commissioned army officers and enlisted personnel of the Defence Forces.

CHAPTER 1

Revenue Administration & ROS

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-

1. Introduction

This chapter outlines how the Irish Pay As You Earn (PAYE) System is operated by each employer under the management of the Revenue Commissioners.

2. The Revenue Commissioners

The Revenue Commissioners are responsible for “**serving the community by fairly and efficiently collecting taxes and duties**” which includes responsibility for the operation of the PAYE system in Ireland. The Board of the Revenue Commissioners consists of three Commissioners, who are appointed by the Taoiseach, one of whom is appointed as Chairman by the Minister for Finance. The Board has overall responsibility for the leadership and management of Revenue. The Board delegates responsibility for the management of each Division or Region to an Assistant Secretary, who reports to a specific member of the Board.

2.1 National Employer Helpline

The contact details for employers in relation to queries relating to the PAYE System, Universal Social Charge (USC), Revenue Payroll Notifications (RPNs), Payroll Submissions, Monthly Statements, Benefit-in-Kind, new employees, etc. are as follows:

Telephone: 01 738 36 38
Email: MyEnquiries service which is available online in ROS
Post: Collector General’s Division, Government Offices, Nenagh, Co. Tipperary

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For taxpayer confidentiality reasons, the helpline is unable to discuss the tax affairs of an individual employee with their employer. Such queries should be made by the employee directly to Revenue.

2.2 My Enquiries

Revenue encourages employers to use its secure electronic communications channel for sending enquiries or correspondence to Revenue, called MyEnquiries. New users can register for MyEnquiries on the Revenue website as a business customer via ROS or via myAccount for a PAYE taxpayer. Once registered, new enquiries can be submitted, and previous enquiries and Revenue responses can be viewed.

Enquiries can be categorised using the drop down list of categories and subcategories. Attachments can be added to the enquiry subject to a maximum file size of 10MB for individual files and subject to a maximum number of 10 attachments. Revenue issues a response to the enquiry by sending an email to the registered email address and it can also be viewed in the enquiries record screen. A tracking system allows taxpayers and agents to track the progress of their enquiry, by viewing the current status (pending, in progress, completed, awaiting feedback, or Revenue initiated) of an enquiry to include the location (division) that is dealing with their enquiry.

Information on registering for MyEnquiries is available at: www.revenue.ie/en/online-services/services/manage-your-record/myenquiries.aspx

2.3 Office of the Collector General

The Collector General is appointed by the Revenue Commissioners and has overall responsibility for the collection of taxes, duties and charges, which come under the remit of the Revenue Commissioners. Any queries in relation to the payment of tax, PRSI and USC (including payment by direct debit) are dealt with by the Collector General's office. If a taxpayer is financially unable to discharge a tax liability, he should discuss this with the office of the Collector General rather than with the Employer helpline. In certain circumstances an instalment arrangement may be agreed between the taxpayer and the Collector General's office. The Collector General's office is also responsible for issuing assessments for unpaid tax, PRSI and USC. Contact details for the Collector General's office can be found at: www.revenue.ie/en/contact-us/index.aspx

2.4 Revenue Sheriff and Revenue Solicitor

The Collector General's office may refer unpaid taxes to the Revenue Sheriff or Revenue Solicitor for enforcement or collection, depending on the amount of unpaid taxes. Once the Sheriff receives a warrant from the Collector General, a letter is issued to the taxpayer advising of the procedure and possible seizure of goods to the value of the unpaid taxes. If payment is received prior to the decision to involve the Sheriff, the warrant is withdrawn. However, if payment is received after the Sheriff has become involved, the Sheriff's fees must be paid in addition to the unpaid taxes. Similarly with regard to the Revenue Solicitor, once a case has been referred to him for collection of unpaid taxes, it will be necessary not only to pay the outstanding taxes but also the Solicitor's costs.

If a taxpayer finds that the collection of unpaid taxes has been referred to the Revenue Sheriff or Revenue Solicitor, he should first of all contact the Revenue Sheriff or Revenue Solicitor to forestall any action. There is no point in contacting the local tax office or Employer helpline at this point as the Sheriff or Solicitor will only take instructions from the Collector General's office. The Sheriff or Solicitor will generally allow a short delay to enable the individual to make any

representations to the Collector General's office, but unless there has been an error on the part of Revenue in referring this matter to the Sheriff or Solicitor, the taxpayer will be liable to pay any charges incurred in addition to any taxes due. In all cases where unpaid taxes have been referred to the Sheriff or Solicitor, the taxpayer should take immediate action as failure to do so could lead to a seizure of his goods or a court judgement against him.

2.5 Revenue Technical Service (RTS)

This service was introduced by Revenue to handle complex technical issues on which practitioners and business taxpayers may need clarification. The taxpayer should exhaust any available resources (e.g. information available on the Revenue website, case law, etc.) before using this resource. Queries intended for the RTS should be submitted via MyEnquiries to the relevant Queries Management Officer. Further information on this service is available at: www.revenue.ie/en/tax-professionals/rts/index.aspx

2.6 ROS Technical Helpdesk

For technical queries relating to ROS, the ROS Technical Helpdesk can be contacted as follows:

Telephone: 01 738 36 99
Email: roshelp@revenue.ie

3. Revenue On-Line Service

The Revenue On-Line Service (ROS) is an online system offering business taxpayers a quick, secure and cost effective method to manage their tax affairs. ROS allows business taxpayers to:

- View their current tax position,
- File tax returns online,
- Register for other taxes, and
- Apply for tax clearance

ROS also allows tax agents to file online returns for their clients and to view the Revenue account information for each of their clients.

ROS is the online service for business taxpayers. MyAccount is the online service for PAYE taxpayers.

3.1 Mandatory e-Filing

Revenue aims to make it as easy as possible for taxpayers to comply with their filing and payment obligations using ROS. Revenue's mandatory electronic payments and returns programme commenced in 2009 and most business taxpayers and those claiming various tax reliefs are now required to pay and file online.

More information about those who are required to pay and file electronically can be found at <http://www.revenue.ie/en/self-assessment-and-self-employment/mandatory-efiling/index.aspx>

Refunds of taxes which are subject to mandatory e-Filing (e.g. refunds of Income Tax, PRSI and USC) are made electronically to the taxpayer's nominated bank account. **Note:** taxpayers are required to nominate a bank account to receive tax refunds. This can be the same bank account which is used to pay tax liabilities. This can be done using the "Manage Bank Accounts" tab in ROS.

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Failure to communicate electronically with Revenue can result in a penalty of €1,520 being applied.

4. Becoming a ROS Customer

In order to become a ROS customer, you must log onto the Revenue website – www.revenue.ie and click on “Online Services” and then click on “Register for ROS”.



The screenshot shows the Revenue website's homepage. At the top, there is a green header bar with the Revenue logo, the text "Cain agus Custaim na hÉireann Irish Tax and Customs", a search bar, and a "Sign in to myAccount or ROS | Gaeilge" link. Below the header, there are three main service categories: "Online services" (which is circled in black), "Tax professionals", and "Customs traders and agents". The "Online services" section contains a sub-section for "myAccount" which includes links for "Sign in or register" and "Sign in to myAccount". It also has a "ROS" section which includes a link for "Register for ROS". To the right of these sections is a sidebar titled "List services by:" with tabs for "All", "myAccount", and "ROS" (which is highlighted). A dropdown menu under "myAccount" lists various services: "Claims and refunds", "Customs", "Excise", "Manage your record", "PAYE Services", "Payments", and "Property".

Then you must apply for your ROS Access Number (RAN) by clicking on ‘Apply for your RAN’ and entering your tax registration number and contact details. An acknowledgement screen will be displayed, and the RAN is then validated by Revenue and posted to the taxpayer’s registered address. The RAN will remain valid for 3 months. The RAN together with the taxpayer’s registration number is then used to apply for a Digital Certificate, which is required to access the system. The RAN is numeric and up to ten characters in length.

Register for ROS - Business Customers and Practitioners

Who can apply to become a ROS Customer?

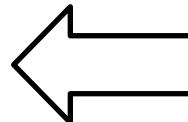
- ✓ Any individual or entity with an Irish tax registration number already registered for a business tax e.g. Income Tax, VAT or Employers PAYE. Individuals who are registered for PAYE or LPT only should register for myAccount
- ✓ Tax practitioners with a valid TAIN number
- ✓ LPT Receivers with a valid Receiver number

Click on the steps below to start or continue the registration process



Step 1
Apply for your ROS Access
Number (RAN)

Apply for your RAN →



Step 2
Apply for your Digital
Certificate

**Apply for your Digital
Certificate →**



Step 3
Download and Save your Digital
Certificate

**Download and Save your
Digital Certificate →**

Step 1
Apply for RAN



Step 2
Apply for your Digital Certificate
(Input RAN)



Step 3
Download and Save your Digital
Certificate



Your ROS Access Number (RAN) will be posted to the address on our records.
The * symbol beside a field denotes that this field is required

Are you applying in your capacity as:

An Individual or Company

A Tax Agent

An LPT Receiver

**To apply for a RAN, please enter your appropriate tax
registration details here:**

Tax Type * [What is this?](#)

Please select

Registration Number * [What is this?](#)

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1. On receipt of the RAN, log onto www.revenue.ie and follow the steps as described above. Proceed to Step 2 by clicking on ‘Apply for your Digital Certificate’. You must enter your RAN number together with your tax registration number and your email address. An acknowledgement will be displayed, and a ROS System password will be issued to you by text or email depending on which option you choose. The system password is valid for 1 hour. The password is ten alphanumeric characters, and you will use this password to retrieve your Digital Certificate as outlined in Step 3. You will be required to select 5 security questions from a list of 10 before downloading and saving the ROS Digital Certificate.

The introduction of security questions simplifies the process for retrieving lost or expired Digital Certificates or forgotten passwords. If taxpayer forgets his password, he will be required to answer 2 randomly selected questions from the 5 chosen questions which will be used to confirm the taxpayer’s identity. Taxpayers will have 2 attempts to answer the questions. If incorrect answers are provided, the taxpayer will have to either re-register for ROS or contact the ROS Technical Helpdesk.

The screenshot shows a web-based application titled 'ROS Registration' under the 'Revenue' logo. It displays a three-step process: Step 1 (Apply for RAN), Step 2 (Apply for your Digital Certificate (Input RAN) - highlighted with a yellow circle), and Step 3 (Download and Save your Digital Certificate). Below the steps, a section titled 'Application for a Digital Certificate' asks for the RAN, marked with a red asterisk. A text input field is provided for the RAN, and a 'Next' button is at the bottom.

2. On receipt of the ROS System password, go to Step 3 by clicking on ‘Download and save your Digital Certificate’. You must accept the ROS terms and conditions. You will need your tax registration number to complete this step. When you retrieve your Digital Certificate you must install it on your computer. The default location to store the Digital Certificate is ‘c:/ros/roscerts’ on the user’s computer. You can change the default location at this point. If, at a later stage you would like to change the location of your Digital Certificate you can do so via the ROS Login page by selecting the ‘change your Digital Certificate location’ option. An up to date copy of your Digital Certificate must be kept on your computer. You will also be issued with a Digital Certificate password which can be changed to a password of your own choice. The Digital Certificate is a guarantee that the private key, which is contained in the certificate, can only be used by the person to whom it belongs for authentication and signing purposes.

<p>Step 1 Apply for RAN</p>	<p>Step 2 Apply for your Digital Certificate (Input RAN)</p>	<p>Step 3 Download and Save your Digital Certificate</p>
		
<p>Terms and Conditions</p> <p>The use of the Revenue On-Line Service (ROS) is governed by the terms and conditions set out below. These terms and conditions are important and are for the protection of both you and Revenue. Please take the time to read them carefully.</p> <div style="border: 1px solid black; padding: 5px; min-height: 150px;"> <p>1. General terms and conditions:</p> <p>1.1 ROS is established in Ireland in accordance with the laws of the Republic of Ireland and is governed by Irish laws. When you use ROS, you accept that your use and any information on ROS, is governed by the laws of Ireland. If any dispute arises from your use of the ROS site or any information on it, you agree to allow any such dispute to be heard in the Irish courts.</p> <p>1.2 The Revenue Commissioners have and retain, subject to existing contractual agreements with third party service providers, all rights (including but not limited to, copyrights, patents, trade secrets and any other intellectual property rights) in all versions of ROS.</p> <p>1.3 ROS may only be used by Revenue's employees, customers, agents acting on behalf of Revenue's customers or third parties registered with or contracted by Revenue solely for the purpose of transacting business with Revenue.</p> <p>1.4 Revenue reserves the right to make changes to the information, design and services provided in the ROS website without notice and without liability. Every effort will be made to advise of changes in advance.</p> <p>1.5 Revenue reserves the right to add, amend or vary the terms of this</p> </div>		
<p>Click I Accept to proceed with retrieving your digital certificate</p> <p>I Accept</p> <p>Click I Decline if you do not wish to accept these Terms & Conditions</p> <p>I Decline</p>		

<p>Step 1 Apply for RAN</p>	<p>Step 2 Apply for your Digital Certificate (Input RAN)</p>	<p>Step 3 Download and Save your Digital Certificate</p>
		
<p>Download and Save your Digital Certificate</p> <p>Are you applying in your capacity as:</p> <p><input checked="" type="radio"/> An Individual or Company</p> <p><input type="radio"/> A Tax Agent</p> <p><input type="radio"/> An LPT Receiver</p> <p><input type="radio"/> A Sub User</p>		
<p>To retrieve a digital certificate on behalf of yourself or your business, please enter your details here:</p> <p>Tax Type * What is this?</p> <p>Please select</p> <p>Registration Number * What is this?</p> <p><input type="text"/></p>		

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- Once the Digital Certificate is installed you are now a ROS customer. Once logged into ROS, the first screen a user will see is ‘My Services’. You will need to set up a ROS Debit Instruction (RDI), variable direct debit or pay by credit card or debit card, in order to make payments when filing returns. With a variable direct debit, the amount of tax due will be automatically debited from this bank account on the due date. It is possible however, to make a return without making a payment, if required. You can also enter the bank account that any tax refunds should be paid into.

Revenue correspondence can be accessed by clicking on “Revenue Record”. Returns can be submitted online or by uploading a file. When completing an online return, the user selects the tax type (e.g. PAYE – Emp) and then selects the return they wish to file. A blank return will appear on screen which will display the necessary boxes to be completed. Employers can request Revenue Payroll Notifications for employees and submit Payroll Submissions. The employer can also view his monthly Statement and file his monthly Returns. When the return is signed using the Digital Certificate, the return is automatically submitted.

Any changes made on ROS (or returns submitted) must be signed using the Digital Certificate password.

The screenshot shows the ROS homepage with a dark green header bar. The header includes the Revenue logo, language options (GAEILGE, ENGLISH, ROS HELP), a user profile (SARA-ER-STARK-STARK), and an EXIT link. Below the header is a navigation menu with tabs: MY SERVICES (highlighted in white), REVENUE RECORD, PROFILE, WORK IN PROGRESS, and ADMIN SERVICES. A message 'No current tax clearance certificate.' is displayed above the main content area. The main content area has a grey header 'My Frequently Used Services' with a blue 'Add a service +' button and a collapse/expand arrow. Below this is a section titled 'Employer Services' with four columns: 'Revenue Payroll Notifications (RPNs)' (with a 'Request RPNs' link), 'Payroll' (with 'Submit payroll' and 'View payroll' links), 'Returns' (with a 'Statement of Account' link), and 'Additional Services' (with 'PPS Number Checker' and 'PAYE Modernisation Information' links). At the bottom of the page are two sections: 'File a Return' (with 'Complete a Form Online' and 'Upload Form(s) Completed Offline' links) and a footer with a copyright notice for Revenue Ireland.

A working email account is required as emails will be sent to notify taxpayers when returns are due and when documents have been placed in the ROS Inbox.

Taxpayers require software called Adobe Acrobat Reader DC to be installed on their computer in order to display documents, which can be downloaded free of charge from the following website <https://get.adobe.com/reader/>. If any difficulties arise when using ROS, taxpayers/agents should contact the ROS Technical Helpdesk.

4.1 Setting up a Sub-User for Employer Services

It is possible to add more users, each with full or varying levels of permissions. To add another sub-user for employer services, click on ‘Admin Services’ and click on ‘Add New’ and complete the required information.

The screenshot shows a software interface titled 'Administration Services'. At the top, there are tabs: 'MY SERVICES', 'REVENUE RECORD', 'PROFILE', 'WORK IN PROGRESS', and 'ADMIN SERVICES'. The 'ADMIN SERVICES' tab is highlighted with a red border. Below the tabs, there is a section titled 'MS ROS PROJECT' containing instructions for selecting individuals and applying for certificates. At the bottom right of this section, there is a horizontal row of buttons: 'Select', 'Surname', 'Firstname', 'ID Ref.', 'System Password', and 'Status'. To the right of these buttons is a vertical stack of three blue buttons: 'Add New' (highlighted with a red border), 'View', and 'Revise'.

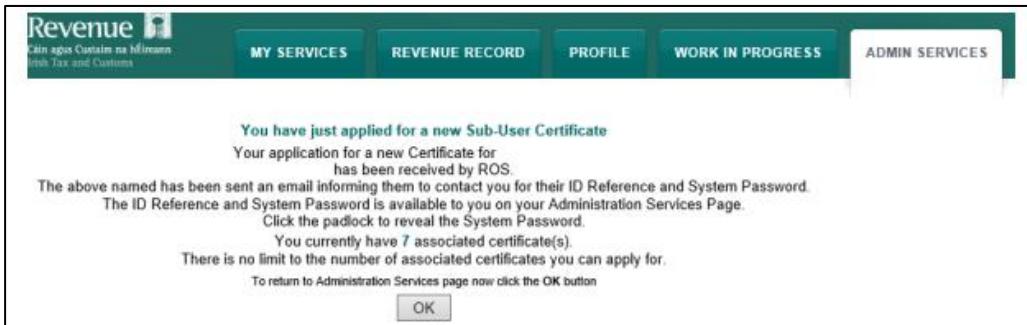
Enter only the following details:

- **Surname:** Surname of the individual that the cert is for.
- **First Name:** First name of the individual the cert is for.
- **ID Ref:** This is an identifier that you make up - e.g. staff number, or other identifier. The ID Ref will be used to download the certificate and must be unique.
- **ID Type:** The type of ID reference number given from the dropdown menu - e.g. Other.
- **Email Address:** Contact e-mail address for the above named. Reminders to renew the certificate will be sent to this email address. Click “Submit”.

Surname	<input checked="" type="checkbox"/>	<input type="text"/>
First Name	<input checked="" type="checkbox"/>	<input type="text"/>
ID Ref	<input checked="" type="checkbox"/>	<input type="text"/> ID Type <input checked="" type="checkbox"/> <input type="button" value="▼"/>
E-mail address for the above named	<input checked="" type="checkbox"/>	<input type="text"/>
Third Party Certificate	<input type="button" value="▼"/>	
Money Laundering Reporting Officer (MLRO)	<input type="radio"/> Yes <input checked="" type="radio"/> No	
SEED Number for the above named	<input type="text"/>	
EORI Identifier for the above named	<input type="text"/>	

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You should receive confirmation that a new Certificate has been requested.



Click the “System Password” padlock icon for the new sub-user and note the system password; you should also note the “ID Ref” you created as they will be needed to download the certificate.

You must notify the sub-user of the “ID Ref” and “System Password” for the certificate so that they can complete Step 3 of Register for ROS. It should be immediately available for download. Once the sub-cert is downloaded, the Status column will change to Active.

The screenshot shows the "Administration Services" page for the "MS ROS PROJECT". The table lists a single user: "TESTER" with "TEST" as the first name, "TEST01" as the ID Ref, and the "System Password" field containing a padlock icon, which is highlighted with a red box. The status is "REGISTERED". Below the table, there is a list of instructions and a link to additional information. On the right side of the table, there are buttons for "Add New", "View", and "Revise", with "Revise" being highlighted with a red box.

Select	Surname	Firstname	ID Ref.	System Password	Status
<input type="radio"/>	TESTER	TEST	TEST01		REGISTERED

To give the sub-cert permissions, select the sub-user, then click on “Revise” on the right

The screenshot shows the "Administration Services" page for the "MS ROS PROJECT". The table lists the same user: "TESTER" with "TEST" as the first name, "TEST01" as the ID Ref, and the "System Password" field containing a padlock icon. The status is "REGISTERED". The "Revise" button on the right side of the table is highlighted with a red box. The rest of the page includes instructions and buttons for "Add New" and "View".

Select “File” or “Prepare” on the PAYE-Emp line, then scroll down to the very bottom of the page and click on “Confirm”.

Permissions on Tax/Procedures Services				
Taxes/Procedures	No Permissions	View	Prepare	File
PAYE-Emp	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Income Tax	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Capital Gains Tax	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C&E	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
etc	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Restrictions

Restrict PAYE-EMP Forms

Sub-users with “File” permissions will have access to all employer services and inbox items.

Sub-users with “Prepare” permissions will have access to RPN services and PPSN Checker services only.

Sub-users with “View” permissions will have no access to Employer Services.

Dual signatures and second signatures do not apply to the Employer Services.

Employer			
	View Permissions	Prepare Permissions	File Permissions
Employer Services Dashboard	X	✓	✓
Lookup RPN	X	✓	✓
Request New RPN	X	✓	✓
Payroll Submission	X	X	✓
Check Payroll Submission (view payroll)	X	X	✓
Check Payroll Run (view payroll run)	X	X	✓
Returns Reconciliation	X	X	✓
Statement of Account	X	X	✓
View Returns	X	X	✓
Accept Returns	X	X	✓
Submit a payment for period after 01/01/19	X	X	✓
PPSN Checker	X	✓	✓

5. Filing Returns Electronically

ROS customers can electronically file and access:

- Form 11 Income Tax Return for self-employed individuals
- Revenue Payroll Notifications

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- Payroll Submission
- Monthly Return
- Receipts Tracker (to record health, trade, rental or other expenses)
- Bi-monthly VAT 3 returns and Return of Trading Details
- VIES Returns (Monthly, Quarterly and Annual) and Intrastat Returns
- VAT on e-Services (Quarterly Return)
- Relevant Contracts Tax – Contract Notifications, Payment Notifications, Returns
- Local Property Tax (LPT)

Various other returns for other taxes can also be filed on ROS.

As tax returns are due to be filed on or before certain statutory due dates, ROS sends the taxpayer and agent a reminder email to file the return. Filing tax returns electronically is a faster and more convenient way to fulfil filing obligations.

6. Benefits of ROS

The benefits include the following:

- Access to Revenue on a 24 hour, 365 day basis,
- Confidential and secure channel for the electronic filing of returns and payment of liabilities,
- Instant acknowledgement of returns,
- Faster and more efficient service,
- Simple user friendly forms,
- Instant and accurate calculation of liability,
- On-line and off-line filing facilities,
- Savings in time and money,
- No duplication of work, and
- Extended payment dates.

ROS enables taxpayers to view details of their Revenue account including details of returns and payments.

Where an employer pays and files his Monthly Return via ROS, while the Return must be filed by the 14th of the following month, the payment date is extended to the 23rd of the following month.

7. myAccount for PAYE Taxpayers

PAYE taxpayers can log on to the ‘contact us’ page on the Revenue website www.revenue.ie/en/contact-us/index.aspx and enter their PPSN or county of residence. This will then bring up the relevant contact details (email, phone, postal address and public office) for the taxpayer for the various different taxes such as Income Tax, USC, Local Property Tax, etc.

Employee telephone helpline: 01 738 36 36

Email: Use the secure MyEnquiries service available in myAccount.

Similar to ROS, myAccount is a secure online service, which allows PAYE taxpayers to manage their tax affairs electronically. To register for myAccount, taxpayers should log on to the Revenue website www.revenue.ie, click on “Online Services” and then click on “Register for myAccount”.

The screenshot shows the Revenue Ireland website. At the top, there's a green header bar with the Revenue logo, the text 'Cain agus Custaim na hÉireann Irish Tax and Customs', a 'Sign in to myAccount or ROS | Gaeilge' link, and a search bar with a magnifying glass icon. Below the header are three main navigation links: 'Online services' (showing a smartphone displaying the app), 'Tax professionals' (showing a hand using a calculator), and 'Customs traders and agents' (showing a large cargo ship). The main content area has a grey background. On the left, there's a section for 'Sign in or register' with 'myAccount' highlighted. It includes a 'Sign in to myAccount →' button, a 'Register for myAccount' link, and a 'Sign in to myAccount using MyGovID' link. To the right of this are three blue buttons: 'All', 'myAccount' (which is dark grey with white text, indicating it's selected), and 'ROS'. A dropdown menu under 'myAccount' lists several categories: 'Claims and refunds', 'Manage your record', 'PAYE Services', 'Payments', and 'Property', each with a small downward arrow icon.

The registration process requires the taxpayer to enter his name, home address, PPS Number (PPSN), date of birth, mobile or landline number and email address. Taxpayers can get instant access by verifying their identity with any 2 of the following:

- Irish driving licence number
- Information from their P60 (issued for tax years prior to 2019)
- Information about their Income Tax notice of assessment or acknowledgement of self-assessment from Revenue.

Where the taxpayer cannot provide this information, he should select the 'by post' option and Revenue will issue a password by standard post.

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The screenshot shows the Revenue myAccount registration process. It consists of three main steps:

- Step 1:** Complete the registration form. This step is currently active, indicated by a yellow dot on the progress bar.
- Step 2:** Enter your temporary password.
- Step 3:** Create a new password.

What do I need to register?

- ① PPS number
- ② Date of Birth
- ③ Mobile number or landline number
- ④ Email address
- ⑤ Home address

To get instant access, verify your identity with 2 of the following:

- Irish driving licence number
- Information from your P60
- Information from your Income Tax notice of assessment or acknowledgement of self assessment

Who can register?

- Individuals who are not registered for ROS.
This mainly includes:
 - PAYE taxpayers
 - LPT taxpayers
 - Business customers who do not have an active digital certificate for ROS
 - New taxpayers

Start Registration →

Or

Continue with MyGovID

What is MyGovID?

A temporary password can be sent immediately by text or email where Revenue can identify the individual, or up to 5 working days if sent by post. Temporary passwords received by email or text will expire after 1 hour, while those received by post will expire after 21 days from the date on the letter.

Step 1: Complete the registration form

[← Back](#) Question 2

How would you like to get your temporary password?

By text (today)

By email (today)

By post (up to 5 working days)

Once the taxpayer receives his temporary password, he can access myAccount from the sign in / registration page. They will be required to enter their PPSN, date of birth and temporary password. Once they access myAccount, they will be prompted to change their password.

Sign In

If you have a verified MyGovID account, you can use your MyGovID details to sign in

[Login with MyGovID](#)

[What is MyGovID?](#)

Or

Login using your Revenue account details

PPS Number

Date of Birth

DD MM YYYY

Password

If you received a temporary password recently, you can use it to sign in here.

[Forgot Password?](#)

Taxpayers will be required to enable Two-Factor Authentication when registering for myAccount which involves the sending of a one-time code to the taxpayer's mobile number every time they log in to myAccount. A mobile number and a recovery email address are required to register for myAccount.

 □

Enhance Your Account Security

Enable Two-Factor Authentication (2FA)

Two-factor authentication (2FA) works by adding an additional layer of security to your online account. It works by sending a one-time code to your mobile phone each time you log in, which needs to be provided along with your existing Revenue login credentials.

Note: The preferred authentication mechanism for MyAccount is to use [MyGovID](#), which already provides 2FA security. Authentication using Revenue login details should only be used where this is not an option.

[Learn More](#)

Enable (2FA) →

A mobile number and an email address are required to register for myAccount. Taxpayers will be required to select 3 security questions from a list.

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 myAccount [Gaeilge](#) [Sign In](#)

Please choose your Security Questions

[← Back](#) Please choose and answer three security questions below

Select a question
Security questions will be used to recover your account in the event that you have lost access to your mobile number
Please select three security questions below and provide an answer for each question.

Question 1 *

Select a question

Answer 1 *

Question 2 *

Select a question

Answer 2 *

Question 3 *

Select a question

Answer 3 *

Register Now →

A verification code (which will be valid for 5 minutes) will be sent by text to the taxpayers mobile number which they will be required to enter in the next screen.

 myAccount [Gaeilge](#) [Sign In](#)

Enter Secure Login Verification Code



Enter Secure Login Verification Code

We have just texted you a verification code to *****29. This verification code will be valid for 5 minutes. Please enter it below to securely login

Verification Code

Verify Code →

[Send Verification Code Again](#)

[I don't have access to this phone](#)

Taxpayers will then be prompted to confirm their mobile number. A verification code (valid for 5 minutes) will also be emailed to the taxpayers recovery email address.

MyGovID

MyGovID is an online identity service which enables taxpayers to use one online account to access services provided by multiple Government Departments. Taxpayers who register for MyGovID or who already have an account will already have access to myAccount and **do not** need to register again. Taxpayers registered for MyGovID also have access to MyWelfare where they can make an online claim for various benefits provided by the Department of Social Protection.

Once the taxpayer has successfully registered for myAccount (or MyGovID) he can then use any of the following Revenue services which are available online.

The screenshot shows the Revenue Ireland Tax and Customs website. At the top, there's a dark header with the Revenue logo and a search bar. Below the header, a teal navigation bar includes a 'Back to homepage' link. The main content area is divided into sections:

- Online services**: This section contains links for 'Sign in or register myAccount' (with a 'Sign in to myAccount →' button), 'Register for myAccount', 'Sign in to myAccount using MyGovID', 'ROS' (Revenue Online Service), and 'Local Property Tax (LPT)'.
- List services by:** This section has three tabs: 'All' (selected), 'myAccount', and 'ROS'. Under each tab, there are dropdown menus for various services:
 - All**: Claims and refunds, Manage your record, PAYE Services, Payments, Property, Register for an online service, Tax returns, Tools and calculators, Vehicle services.
 - myAccount**: (This tab is selected, indicated by a downward arrow): Sign in to myAccount, Register for myAccount, Sign in to myAccount using MyGovID.
 - ROS**: Sign in to ROS, Register for ROS.

The following is an outline of some of the most popular services for PAYE taxpayers. It should be noted that the same service may be accessed through various links.

(a) PAYE Services

PAYE Services includes a number of services for PAYE taxpayers (employees and pensioners) including:

- **Manage your tax for the current year** – PAYE taxpayers can view and/or claim tax credits, including real-time credits as applicable, view employment and/or pension pay and deductions as submitted by their employer, update their USC position, view their latest tax credit certificate, declare additional income, view/decide how tax credits and SRCOP are split between employments and/or spouses.
- **Review your tax for a previous year** – PAYE taxpayers can access their Employment Detail Summary and complete an Income Tax Return to obtain their Statement of Liability for any of the previous 4 tax years.
- **Add a Job or Pension** – This allows an employee or pensioner to register his new job (or private pension) with Revenue which will enable Revenue to issue an RPN to the employer

CHAPTER 1

- and a Tax Credit Certificate to the employee ensuring that the employer can deduct the correct amount of tax for that employment (or private pension).
- **Claim for unemployment repayments for the current year** – An individual can make a claim for a tax refund while unemployed for a period of at least 4 weeks after the date of cessation of employment assuming the individual previously paid income tax in the current tax year. Where an individual is in receipt of Jobseekers Benefit, he should wait for a period of 8 weeks after the date of cessation before submitting the unemployment repayment claim.

(b) Manage your Record

This service allows a PAYE employee or pensioner to:

- Manage their tax for the current year as outlined above.
- Review their tax for a previous year as outlined above.
- Securely send and receive correspondence to and from Revenue via MyEnquiries.
- View, download or print your Tax Credit Certificate from My Documents.
- View, download or print a Statement of Liability for the current year and the last 4 tax years.
- Electronically record and manage receipts relating to health, trade, rental, other expenses, and documents with the Revenue Receipts Tracker (RRT).
- Manage tax registrations online. Certain individuals or bodies (non-resident director, non-assessable spouse, individual not currently eligible to register for myAccount, unincorporated bodies or non-profit organisations etc.) are required to submit paper applications.
- Make a payment online for various tax types, such as LPT.
- Apply for tax clearance online using eTax Clearance (eTC). A TCC is confirmation from Revenue that your tax affairs are in order at the date of issue.

Revenue Receipts Tracker (RRT) allows taxpayers to upload images of receipts to Revenue for their expenses including health expenses, remote working expenses, tuition fees, etc. The Receipts Tracker automatically saves and securely stores receipts details and/or images to Revenue storage. If the image is clear, readable, and complete, taxpayers do not need to keep the original receipt. If the taxpayer does not store the receipts and/or images on the Receipts Tracker he must keep all his original receipts for 6 years. Where an employee wishes to avail of real-time credits for health expenses, he is required to upload a clear readable receipt of the expense incurred.

The Revenue Receipts Tracker can be accessed through myAccount under the PAYE Services and Manage My Record. Taxpayers can view receipts previously uploaded in the current year and the previous 4 years. For real-time credits, taxpayers will also see which receipts they have claimed tax relief on, and if any receipts remain unclaimed.

When an employee updates his record and he (or his spouse or civil partner) has more than one employment or pension on record, he will be asked to provide an estimated gross annual income for each employment or pension to enable Revenue assist the taxpayer in dividing his SRCOP and tax credits between employments to ensure that the taxpayer pays the correct amount of tax. Taxpayers can also determine for themselves how they wish to split their tax credits and SRCOP.

Where the individual is unable to estimate the income arising in each employment, he will be asked to confirm which is his main employment (i.e. the highest paid), and any updates (e.g. a new tax credit which has been claimed) will be allocated to the main employment.

(c) Claims and Refunds

This service allows a taxpayer to submit various claims for tax relief such as the Home Renovation Incentive, Help to Buy Scheme, etc.

(d) Payments

This service allows a taxpayer to make an online payment for various taxes such as Local Property Tax.

These services are available to PAYE taxpayers on a secure basis, 24 hours a day, 7 days a week. Any changes made by the taxpayer are immediately updated on his Revenue record. Applications for a repayment of tax are generally paid within 5 working days.

PAYE Services can also be accessed using mobile devices such iPhones, iPads, Smartphones, or other Android devices. Further information is available on the Revenue website at: <http://www.revenue.ie/en/online-services/support/mobile-and-desktop-applications/index.aspx>

8. Employment Detail Summary

For 2019 and subsequent years, Revenue will make an Employment Detail Summary (EDS) available to PAYE taxpayers (i.e. employees and pensioners including those PAYE taxpayers who are also registered for self-assessment). The EDS is made available in January each year in respect of each employment, or occupational pension, held by the employee during the previous tax year and will contain details of the aggregate pay and deductions in respect of **each employment**. If an employee held 2 employments with the same employer during the year, he would receive 2 EDS.

If an employer makes changes to any of the Payroll Submissions in the previous tax year, these changes will result in an amended EDS being made available to the employee which will override any earlier versions.

A paper version of the statement will be made available on request for those individuals who are not registered for myAccount.

For each employment, the EDS will outline the employee's:

- Total gross pay,
- Pay for income tax,
- Income tax paid,
- Taxable benefits (excluding share based remuneration)
- Pay for USC,
- USC paid,
- LPT deducted,
- Employee and Employer PRSI paid,
- PRSI Class, and
- Number of Insurable Weeks.

Note: Covid-19 pandemic related payments paid in the tax years 2020 and 2021 will be included in the EDS.

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To access the EDS, employees should log into myAccount and click “Review Your Tax 2019-2022” as follows:

The screenshot shows the PAYE Services interface. On the left, there is a section titled "Manage Your Tax 2023" which includes a description and a "Review Your Tax 2019-2022" link. To the right, there are several other links: "Manage Your Tax 2023", "Review Your Tax 2019-2022" (which is circled in red), "Update Job or Pension Details", "Create a Summary of Your Pay and Tax Details", and "Receipts Tracker".

Employees should click “view” on the next page as follows:

The screenshot shows the Employee Details Summary (EDS) interface. It starts with a "Tax year" dropdown set to "2022" with a "Select" button. Below it, the year "2022" is displayed in large text. A table follows, listing employment details:

Review type	Description	Status	Action
Statement of Liability	<ul style="list-style-type: none">View your Preliminary End of Year Statement for 2022 based on Revenue's records.Complete your Income Tax return to:<ul style="list-style-type: none">Change existing credits/declared income;Declare additional Income e.g. rental income, income from casual work;Claim additional credits/reliefs e.g. health expenses;Request your Statement of Liability from Revenue.	Available	Request
Employment Detail Summary <small>(i)</small>	<ul style="list-style-type: none">View a summary of the pay and tax details reported by your employer(s)/pension provider(s) to Revenue.Create a document containing a summary of your pay and tax details.	Available	View

The following screen shows details of all employments. Employees can view the details of their pay and statutory deductions for each pay period as submitted by their employer to Revenue by clicking on “view job/pension details”. There is also the option to “Create document” which will allow the employee to create a PDF of the EDS which can be downloaded and printed and where

necessary. It can be provided to a financial institution or other organisation which seeks details of the employee's earnings.

[← Back](#)

Employment Detail Summary 2022

If any of this information is incorrect, please contact your employer/pension provider directly to have it corrected.

You can view each payroll submission by selecting 'View job/pension details'.

You can create a document you can save or print by clicking 'Create document'.

There has been an amendment since you last created an Employment Detail Summary document. You can create an amended document you can save or print by clicking 'Create document'

[Create document](#)

If the employee clicks on "view job/pension details", the following screen provides details of their pay and statutory deductions for each pay period. The employee can contact Revenue if he feels that any of the details reported by the employer are incorrect. A link to report this to Revenue will be embedded on screen. If any errors are found, the employer will be required to correct the underlying Payroll Submission.

[← Back](#)

Job or pension details

If any of this information is incorrect, please contact your employer/pension provider directly to have it corrected. You can also report incorrect details to Revenue through MyEnquiries below using the category of 'PAYE (Pay As You earn) employee/pensioner - Other' and the sub category of 'Employee Payroll Reporting - Compliance'. Please note to include all relevant details in your enquiry such as your employers registration number and the pay date(s) your enquiry relates to.

[My Enquiries](#)

Job or pension details

Employer/pension provider's name	Sara-er-larkin
Employer/pension provider's number	03681093OH
Employment ID	1
Status	Active
Start date	01/01/2015

Pay, Tax, USC, LPT and PRSI details

Gross pay <small>(1)</small>	€30,000.00
Pay for Income Tax <small>(1)</small>	€30,000.00
Income Tax paid	€2,700.00
Taxable benefits	€0.00
Pay for USC <small>(1)</small>	€30,000.00
USC paid	€515.00
LPT deducted	€0.00
Employee PRSI paid <small>(1)</small>	€1,200.00
Employer PRSI paid <small>(1)</small>	€2,600.00
PRSI classes	
PRSI class	A1
Number of Insurable weeks	52

Payroll submissions

Pay date	Gross pay	Taxable benefits	Pay for Income Tax	Income Tax paid	Pay for USC	USC paid	Employee PRSI paid	Employer PRSI paid	LPT deducted	Action
11/12/2020	€30,000.00	€0.00	€30,000.00	€2,700.00	€30,000.00	€515.00	€1,200.00	€2,600.00	€0.00	View

CHAPTER 1

If the employee clicks on “create document”, the following screen provides a PDF of their EDS which is available to print or save, as necessary.

In all correspondence please quote: PPS No: 1234567R		Aisling Ni Mhaolideoin Personal Division PAYE Services P.O. Box 1 Co. Wexford																																				
MR T-SKYLAR LEUSCHKE DAME STREET PAYEOS-PORT KENDRA DUBLIN 6W		Enquiries: 01 7383030 10 Jan 2023																																				
<h3>Employment Detail Summary 2022</h3> <p>If any of this information is incorrect, please contact your employer/pension provider directly to have it corrected</p> <table border="1"><tr><td colspan="2">Job/pension details</td></tr><tr><td>Employer/pension provider name</td><td>Ulisce</td></tr><tr><td>Employer/pension provider no.</td><td>00000000R</td></tr><tr><td>Employment ID</td><td>1</td></tr><tr><td>Start Date</td><td>01/01/2015</td></tr><tr><td colspan="2">Pay, Income Tax, USC, LPT and PRSI details</td></tr><tr><td>Gross pay</td><td>€30,000.00</td></tr><tr><td>Pay for Income Tax</td><td>€30,000.00</td></tr><tr><td>Income Tax paid</td><td>€2,700.00</td></tr><tr><td>Taxable benefits</td><td>€0.00</td></tr><tr><td>Pay for USC</td><td>€30,000.00</td></tr><tr><td>USC paid</td><td>€515.00</td></tr><tr><td>LPT deducted</td><td>€0.00</td></tr><tr><td>Employee PRSI paid</td><td>€1,200.00</td></tr><tr><td>Employer PRSI paid</td><td>€2,600.00</td></tr><tr><td colspan="2">PRSI classes</td></tr><tr><td>PRSI class</td><td>A1</td></tr><tr><td>Number of Insurable weeks</td><td>52</td></tr></table>			Job/pension details		Employer/pension provider name	Ulisce	Employer/pension provider no.	00000000R	Employment ID	1	Start Date	01/01/2015	Pay, Income Tax, USC, LPT and PRSI details		Gross pay	€30,000.00	Pay for Income Tax	€30,000.00	Income Tax paid	€2,700.00	Taxable benefits	€0.00	Pay for USC	€30,000.00	USC paid	€515.00	LPT deducted	€0.00	Employee PRSI paid	€1,200.00	Employer PRSI paid	€2,600.00	PRSI classes		PRSI class	A1	Number of Insurable weeks	52
Job/pension details																																						
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Employer PRSI paid	€2,600.00																																					
PRSI classes																																						
PRSI class	A1																																					
Number of Insurable weeks	52																																					

A paper version of the EDS will be made available on request for those individuals who are not registered for myAccount.

9. Preliminary End of Year Statement

In addition to making an EDS available to employees, Revenue will make a Preliminary End of Year Statement (PEOYS) available to employees. The PEOYS is available from 15th January in respect of the previous year. The PEOYS is based on the employee's total income from all employments and any taxable payments received from the Department of Social Protection. The

PEOYS will show the preliminary results for tax and USC which can be 1 of following 3 outcomes:

- Balanced – The correct Income tax and USC has already been deducted at source through payroll.
- Underpayment of Income tax or USC – The employee has an underpayment of tax or USC for the year and may be required to pay this amount to Revenue, or
- Overpayment of Income tax or USC – The employee has overpaid Income tax or USC during the tax year and may be due a refund from Revenue.

The PEOYS can be accessed by requesting a Statement of Liability as follows:

Tax year			
<input type="text" value="2022"/> ▼			
<input type="button" value="Select"/>			
2022			
Review type	Description	Status	Action
Statement of Liability	<ul style="list-style-type: none"> View your Preliminary End of Year Statement for 2022 based on Revenue's records. Complete your Income Tax return to: <ul style="list-style-type: none"> - Change existing credits/declared income; - Declare additional Income e.g. rental income, income from casual work; - Claim additional credits/reliefs e.g. health expenses; - Request your Statement of Liability from Revenue. 	Available	Request

Preliminary End of Year Statement		
<small>This is a preliminary calculation for 2021 based on the information held on Revenue's records at this time.</small>		
<small>If you have any additional income to declare e.g. rental income, income from casual work, you should declare this income by completing your Income Tax Return. To go directly to your Income Tax Return, click 'Complete your Income Tax Return' at the bottom of this page.</small>		
Preliminary result	Underpayment	€0.21
What your preliminary result means		
Underpayment ⓘ		
<small>Based on Revenue's records for 2021, you paid less Income Tax or USC than you were due to pay. This means that you owe Revenue €0.21 based on current information.</small>		

CHAPTER 1

Preliminary Income Tax result [View Income Tax details](#)

To view a breakdown of your taxable income, credits/reliefs and Income Tax due, click 'View Income Tax details'.

Taxable Income:	€30,000.00	
Preliminary Income Tax result	Balanced	€0.00

Preliminary USC result [View USC details](#)

To view a breakdown of your income chargeable to USC, USC due and USC paid, click 'View USC details'.

Income chargeable to USC:	€30,000.00	
Preliminary USC result	Underpayment	€0.21

How would you like to proceed?

You should complete your Income Tax Return to:

- Change existing credits/declared income;
- Declare additional income e.g. rental income, income from casual work;
- Claim additional credits e.g. health expenses;
- Recalculate your Statement of Liability.

Complete your Income Tax Return →

If you do not need a Statement of Liability and have no additional income to declare or credits/reliefs to claim you can return to 'Review your tax' by clicking the 'Back' button below.

← Back

9.1 Balanced

For many employees it would be expected that the preliminary result will show that the employee's tax and USC is balanced i.e. based on Revenue's records, the correct amount of tax and USC has been paid.

If the employee is happy with this preliminary result, they do not need to take any further action if they don't require a Statement of Liability for any reason.

However, if the employee has additional income to declare or additional tax credits or reliefs to claim, or he simply wants to obtain a copy of his Statement of Liability, he will be required to complete an Income Tax Return.

9.2 Underpayment of Tax by Employee

For some employees who were in receipt of the Pandemic Unemployment Payment (PUP) from the Department of Social Protection in 2021, it is likely that the preliminary result will indicate that the employee has an underpayment of Income tax where their tax credits were not sufficient to cover the income tax liability arising on PUP. The employee should proceed to Complete an Income Tax Return to receive a Statement of Liability but will be afforded some flexibility in terms of paying the liability as outlined below.

9.3 Overpayment of Tax by Employee

If the preliminary result indicates that the employee has an overpayment of Income Tax or USC, he will be required to Complete an Income Tax Return to obtain any refund due and a Statement of Liability. The employee should ensure that his bank account details are up to date in myAccount as Revenue will make all repayments by credit transfer.

10. Complete an Income Tax Return

Where a PAYE taxpayer wishes to:

- Obtain a copy of his Statement of Liability,
- Receive any refund of tax and/or USC due,
- Declare additional income (e.g. rental income, dividend income, income from nixers, etc.)
- Claim for additional tax credits or reliefs (e.g. health expenses, flat rate expenses, remote working, etc.), or
- Change existing credits or declared income,

he will be required to complete an Income Tax Return.

A link to “Complete Income Tax Return” will be available in the when the employee views his PEOYS as illustrated above.

Note: Revenue may also request a PAYE taxpayer to complete an Income Tax Return as a means of carrying out a Compliance Intervention on a PAYE taxpayer.

The taxpayer’s personal details are displayed in the first page of the Income tax Return:

Revenue
An Seanad Éireann - Minister for Finance
Income Tax Return
My Documents

Personal details

Personal details PAYE income Non-PAYE income Tax credits & reliefs Declaration

1 2 3 4 5

* Denotes a required field

T-Jalen's personal details

PPS number

Date of birth (dd/mm/yyyy)

01/01/1960

Civil status

Single

Did you change civil Status in the year 2019?

Yes

No

CHAPTER 1

On the second page, the taxpayer's PAYE income is displayed. The individual has option to add additional income, tax or USC where they are not displayed.

PAYE income

Personal details PAYE income Non-PAYE Income Tax credits & reliefs Declaration

1 2 3 4 5

Click [Edit](#) to add income, tax and USC details where these are not displayed or if you have paid non-refundable foreign tax on any of the PAYE incomes shown.

If any source of PAYE Income is not included, you can use the Jobs and Pensions service to update your records.

Temporary Wage Subsidy Scheme and Employer Refund Scheme were enacted during the Covid-19 Pandemic [Learn More](#)

Your employer operated the Temporary Wage Subsidy Scheme (TWSS) on your behalf. Please check that the reported subsidy amounts paid are correct. If this information is not correct, you must contact your employer directly. If it is incorrect do not submit this declaration of income before confirming with your employer. If your pay and tax information is incorrect, please contact your employer/pension provider directly to have it corrected.

Employer	SARA-ER-LARKIN
Employment ID	1
Employer's tax registration no.	03681093QH
Pay for Income Tax	€30,000.00
Income Tax paid	€2,700.00
Pay for USC	€30,000.00
USC paid	€515.00
Relationship	None
Action	Edit

[← Back](#) [Next →](#)

On the third page, the taxpayer's non-PAYE income is displayed under the relevant heading such as income from the Department of Social Protection, dividends, foreign income, etc. The individual has option to add additional incomes as appropriate.

Personal details PAYE income **Non-PAYE income** Tax credits & reliefs Declaration

1 2 3 4 5

Please confirm, edit or delete income already on record. Add new income not already on record.

Add Income:

Expand All ▾

	Department of Employment Affairs and Social Protection (DEASP)	Show more ▾
	Dividends	Show more ▾
	Foreign Income	Show more ▾
	Other Income	Show more ▾

T-VIVIAN's income

Confirm	Description	Amount	Action
<input checked="" type="checkbox"/>	DEASP Pandemic Unemployment Payment	€2,100.00	

[← Back](#) [Next →](#)

In the category for Department of Social Protection, the individual has the option of adding or amending the amount of the relevant payment received in the previous year as outlined below.

CHAPTER 1

Department of Social Protection (DSP)			
DSP Carer's Income	Select	DSP Adoptive Benefit	Select
DSP Blind Pension	Select	DSP Health & Safety Benefit	Select
DSP Survivors Pension Non Contributory	Select	DSP Survivors Pension Contributory	Select
DSP Invalidity Pension	Select	DSP Jobseekers Benefit	Select
DSP One Parent Payment	Select	DSP Illness Benefit	Select
DSP Maternity Benefit	Select	DSP Paternity Benefit	Select
DSP State Pension Contributory	Select	DSP State Pension Non Contributory	Select
DSP Occupational Injury Benefit	Select	DSP Partial Capacity Benefit	Select
DSP Death Benefit Pension	Select	DSP Deserted Wives Benefit	Select
DSP Disablement Benefit	Select	DSP Short Term Enterprise Allowance	Select
DSP Deserted Wives Allowance	Select	DSP Parents Benefit	Select
DSP Self Employed Jobseekers Benefit	Select	DSP Pandemic Unemployment Payment	Select

On the fourth page, the taxpayer can claim various tax credits and reliefs which are listed in various categories such as Health, You and your family, Your Job, etc.

Tax credits & reliefs

Personal details PAYE income Non-PAYE income **Tax credits & reliefs** Declaration

1 2 3 4 5

Please **confirm**, **edit** or **delete** tax credits and reliefs already on record. **Add** new tax credits or reliefs not already on record.

Add tax credits:

Expand All ▾

Health Show more ▾

You and your family Show less ▾

Owner Occupier Relief	Select	Retirement Annuity Contract incl. QOPP	Select
Tuition Fees	Select	Deed of Covenant	Select
Retainable Charge	Select	Dependent Relative Tax Credit	Select
Employing a Carer	Select	Rent-a-Room Relief	Select
Stay and Spend	Select		

On the fifth page, the taxpayer should review his pay, tax and USC. An option to print the summary is available. Where the taxpayer is satisfied that all the information is correct, he should click next and enter his myAccount password to submit his tax return and receive his Statement of Liability.

CHAPTER 1

← Back

Declaration

Personal details PAYE Income Non-PAYE Income Tax credits & reliefs Declaration

1 2 3 4 5

After reviewing your return details below, please read and confirm your declaration before continuing to submit your Income Tax Return.

Review T-FRANCIS's details

* Denotes a required field

Income (1)		€30,000.00	
Description	Amount on revenue record	Amount declared	Status
UISCE	€30,000.00	€30,000.00	Confirmed

Tax credits & reliefs (2)			
Description	Amount on revenue record	Amount claimed	Status
Personal Tax Credit	€1,650.00	€1,650.00	Confirmed
Employee Tax Credit	€1,650.00	€1,650.00	Confirmed

Declaration

I declare that, to the best of my knowledge and belief, this form contains a correct return in accordance with the provisions of the Taxes Consolidation Act 1997 of all sources of my income and the amount of income derived from each source in the year 2021.
I declare that to the best of my knowledge and belief, all particulars given as regards tax credits, allowances and reliefs claimed and as regards outgoings and charges are stated correctly.

Civil Penalties/Criminal Prosecution - Tax law provides for both civil penalties and criminal sanctions for the failure to make a return, the making of a false return, facilitating the making of a false return, or claiming tax credits, allowances or reliefs which are not due. In the event of a criminal prosecution, a person convicted on indictment of an offence may be liable to a fine not exceeding €120,970 and/or to a fine of up to double the difference between the declared tax due and the tax ultimately found to be due and/or to imprisonment.

Check this box to confirm this declaration.

← Back Print Next →

Income Tax Return

 Secure sign and submit

PPS Number
[REDACTED]

Enter myAccount password
[REDACTED]

Sign and Submit →



Thank you

Your reference number is: 4326700823

Income Tax Return 2021

Once this return is processed, your Statement of Liability (SOL) will be available in 'My Documents' in myAccount, unless further information is required in support of your claim. An email will issue to you from Revenue when your SOL is available to view/download.

Income Tax Return 2018 - 2020

We expect that a copy of your Statement of Liability will be available to view or download from My Documents within five working days. However, if your refund is selected for a verification check, we will contact you directly.

DSP Income

If you were in receipt of income from the Department of Social Protection (DSP) in 2021 your Statement of Liability will be available after 17 January 2022. This is to allow for your record to accurately reflect the total DSP income you have received.

Important notice

From now on all your PAYE correspondence will only issue electronically and you can view, print or download items securely from My Documents. You can access your correspondence quicker and it supports a cleaner environment.

OK

11. Statement of Liability

Revenue will make a Statement of Liability available to the taxpayer once he files his Income Tax return. Employees have the option of printing a copy of the Statement. Where the Statement of Liability indicates that an Income Tax or USC refund is due to the employee, this is refunded by Revenue to the bank account nominated by the employee, generally within 2 or 3 banking days.

Since 1st January 2021, where a taxpayer files his income tax return for any of the previous 4 complete tax years, all underpayments identified (irrespective of the tax year) will be collected as follows:

- Amounts less than €10 will not be collected.
- Amounts greater than €10 and less than €6,000 will automatically be collected over 4 years.
- Revenue will issue a demand for underpayments in excess of €6,000.
- Information will be included on the Statement of Liability to inform the taxpayer how the collection will take place.
- Taxpayers will be offered the option to pay outstanding balance in full or in part via Revpay in myAccount. If the taxpayer opts to pay part of the liability, the balance will be coded over 4 years.

CHAPTER 1

Amended	PAYE/USC STATEMENT OF LIABILITY FOR THE TAX YEAR			2020
PAYE Calculation				
Income	(See Panel 1 overleaf for a breakdown)			€ 33,300.00
Less: Deductions	(See Panel 3 overleaf for a breakdown)			0.00
Taxable Income				33,300.00
€		€		
Charged as follows	33,300.00	@ 20 %	=	6,660.00
Tax Due:				6,660.00
Plus:	Tax Retained by you (See Panel 5 overleaf for a breakdown)			0.00
Adjustments	(See Panel 7B overleaf for a breakdown)			0.00
Gross Tax Payable				6,660.00
Less:	Tax Credits (See Panel 4 overleaf for a breakdown)	3,380.00		
	Taxes Deducted (See Panel 2 overleaf for a breakdown)	2,700.00		
	Reliefs (See Panel 6 overleaf for a breakdown)	0.00		
	Adjustments (See Panel 7A overleaf for a breakdown)	6,080.00		
PAYE Result:	Underpayment	580.00		
Income Chargeable to USC (see panels 9 and 10 overleaf for a breakdown)				
SELF	€ 12,012.00 @ 0.5% =	€ 60.06	€	
	8,472.00 @ 2% =	169.44	€	
	12,516.00 @ 4.5% =	563.22	€	
Less:	USC Deducted:	683.50	€	
USC Result:	Underpayment	109.22	€	
Final Result:	Underpayment	689.22		
Treatment of Result				
To settle this underpayment, please login to myAccount or forward a cheque for €689.22				
Notice I, the above named Inspector, give notice that I have directed that this statement shall be treated in all respects as if it were an assessment to tax raised on you.				
What if you do not agree with the result on this PAYE/USC Statement of Liability? If you do not agree that the result reflects your income or your claims for tax credits, allowances or reliefs for the tax year; you may contact us through myAccount (using MyEnquiries) on www.revenue.ie or by using the phone number or address shown above. We will recheck the result and, if appropriate, make any necessary change.				
Appeal this Statement to the Tax Appeals Commission (an independent statutory body) If you wish to appeal against this Statement, you must do so within the period of 30 days after the date of this Statement by completing and submitting a Notice of Appeal form to the Tax Appeals Commission (TAC). The Notice of Appeal form, which is available on the TAC's website www.taxappeals.ie contains the address to which an appeal is to be sent. You will be required to submit a copy of this Statement with your Notice of Appeal.				

Explanation Panels for PAYE/USC Statement of Liability					
Income from Employments, Pensions and other sources	Panel 1 Income €		Panel 2 Tax Deducted €		
	SELF		SELF		
UlSC€ Temporary Wage Subsidy Employer Refund Scheme	30,000.00 3,000.00 300.00			2,700.00 0.00 0.00	
Combined Total		33,300.00	2,700.00		
Panel 3 Deductions	€ SELF	€	Panel 4 Tax Credits	€ SELF	€
			Personal Tax Cr Employee Tax Cr	1,650.00 1,650.00	
Combined Total			Combined Total	3,380.00	
Panel 5 Tax Retained By You On	€ SELF	€	Panel 6 Reliefs	€ SELF	€
Combined Total			Combined Total		

CHAPTER 1

Panel 7A Adjustments	€ SELF		Panel 7B Adjustments	€ SELF	€
Combined Total	Combined Total				
Panel 7A decreases tax payable while Panel 7B will increase tax payable					
Employments, Incomes and Reliefs chargeable to USC	Panel 9 USC Income		Panel 10 USC Deducted		
	SELF		SELF	683.50	0.00
UISCE Temporary Wage Subsidy	30,000.00 3,000.00				
USC Total	33,000.00			683.50	

12. Selection for Audit

Returns filed using ROS or myAccount are selected for review using the same criteria as paper based returns. Paper returns no longer contain schedules and attachments, which allowed tax officials to perform some verification checks. As schedules and attachments are not transmitted with the electronic or paper returns there may be an element of checking to be completed by Revenue after the returns have been processed to verify the figures.

There is a statutory obligation on taxpayers to retain and preserve all supporting documentation to repayment claims/tax returns for the last 6 complete tax years, in the event of Revenue carrying out an audit. As outlined above, where the taxpayer records the image of the receipts and/or supporting documentation on the Revenue Receipts Tracker this automatically saves and securely stores to Revenue storage, this alleviates the requirement for the taxpayer to retain their own copy.

A taxpayer is limited to submitting a claim for a tax refund to the last 4 complete tax years. Revenue will not accept any refund claims where the claim dates back prior to the last 4 complete tax years.

CHAPTER 2

Calculation of Gross Pay

- 1. Definition of Pay**
 - 2. Calculation of Weekly, Fortnightly, Monthly and 4-Weekly Salary**
 - 3. Calculation of Daily Rate of Pay**
 - 4. Calculation of Overtime Rates**
 - 5. Shift Premiums**
 - 6. Commission and Bonuses**
 - 7. Calculation of Arrears**
-

1. Definition of Pay

Earnings of an office holder or an employee are taxable under the PAYE system. An office holder is a term used to refer to a position which is created by statute, such as a judge, company director, etc. For PAYE purposes, pay (technically known as emoluments) is defined as an employee's pay before any deductions are made by the employer and includes salary, wages, fees, pension, bonus, overtime pay, commissions, holiday pay, sick pay, allowances, etc. This definition includes the notional value of Benefits in Kind which must be recorded through payroll and are subject to Income tax, PRSI and USC. The overall combined amount of the above payments which an employee may receive is commonly referred to as **Gross Pay** before any deductions are made.

Other terminology frequently used in a payroll environment includes such terms as:

- **Pay for USC purposes** – USC is applied to an employee's pay after a limited number of deductions have been made. USC is covered in more detail in the Chapter entitled "Universal Social Charge".
- **Taxable pay** – is the term used to refer to the amount of an employee's pay which is liable to Income tax. It is calculated as gross pay less certain deductions permitted by Revenue (i.e. contributions to Revenue approved pension schemes and Permanent Health Insurance schemes). This is covered in more detail in the chapter entitled "Pensions and PRSAs. Additional deductions are allowable when calculating an employee's taxable pay in addition to those allowable for calculating pay for USC purposes.
- **Reckonable Earnings** – is the term used to refer to the amount of an employee's pay which is liable to PRSI. This amount may be different from pay for USC purposes and taxable pay. This is covered in more detail in the chapter entitled "The PRSI System".
- **Net Pay or Net Take Home Pay** – is the term used for the amount of money an employee takes home at the end of each pay period after all deductions have been made. This is more commonly referred to as net pay.

Certain payments which have been agreed by Revenue, may be made to employees free of tax, such as travel and subsistence payments which do not exceed the Revenue approved limits or the

CHAPTER 2

reimbursement of expenses which an employee incurs on behalf of his employer. These payments are not taxable and therefore do not form part of an employee's gross pay. Pay for tax purposes is covered in the chapter entitled "**Pay for Tax Purposes**" and the payment of expenses is covered in more detail in the chapter entitled "**Expenses and Tax Free Payments**".

The calculation of holiday pay has already been covered in the chapter entitled "**Organisation of Working Time Act 1997 – Holidays**" and it is not proposed to repeat it in this chapter.

2. Calculation of Weekly, Fortnightly, Monthly and 4-Weekly Salary

On commencement of employment, an employee will normally be informed of his salary. This could be an annual salary which is paid in regular instalments each pay period, or a set rate per hour. Where an employee is paid a salary, his payment for a full week, fortnight, month, four-weekly basis, or any other frequency, will be the annual figure divided by 52 weeks, 26 fortnights, 12 months or 13 four-weekly periods in the year respectively.

Employees who are paid weekly are usually paid a weekly wage or an hourly rate of pay, rather than an annual salary. Where an employee is paid a set rate per hour, the number of hours worked during the pay reference period determines how much the employee will be paid.

Example 1

Mary receives an annual salary of €30,000 per year which is paid in regular monthly payments. Calculate Mary's gross pay per month.

Solution 1

Most employers will calculate monthly pay as the annual pay divided by 12. Mary will receive a regular monthly payment of €2,500 (€30,000 divided by 12 pay periods).

Example 2

Mark commenced employment and will receive an hourly rate of pay of €12.50 per hour. He is paid fortnightly. Calculate his gross pay for this fortnight assuming he is to be paid for 80 hours.

Solution 2

Mark will receive a gross payment of €1,000 (80 hours x €12.50).

3. Calculation of Daily Rate of Pay

Where an employee is paid monthly and is entitled to receive a salary for the full month, the annual salary is divided by 12 months, as outlined in the previous paragraph. The same principle applies to any other pay frequencies. Where an employee receives an annual salary, a daily rate of pay is often required to be calculated in order to pay an employee for a specific number of days within a month in which he commences employment, or in a month in which he is leaving employment. Where an employee is paid by means of an hourly rate, this problem does not arise.

The question often arises as to how a daily rate of pay is calculated from an annual salary for an employee who is paid monthly? There are many answers to this question, and no one answer is more right or wrong than the other. However, the outcome can be somewhat different. Whichever method is adopted by an employer should be stated in the employee's statement of terms and conditions of employment or staff handbook and applied consistently to avoid any disputes arising. The following are some of the more common methods adopted and the differences which may arise.

3.1 Number of Working Days per Year

On the assumption that there are 52 weeks in a year, and an employee works a 5 day week, many employers use the following formula to calculate a daily rate of pay for employees:

$$\text{Annual salary divided by } 260 \text{ days*} = \text{Daily rate}$$

* 52 weeks x 5 days per week = 260 days per year.

Where an employee works part-time, the number of working days in the year should be apportioned accordingly. For example, an employee who works 3 days per week:

$$\text{Annual salary divided by } 156 \text{ days*} = \text{Daily rate}$$

* 52 weeks x 3 days per week = 156 days per year.

However, where an employee works Monday to Friday each week, in many calendar years there are 261 working days, or possibly 262 in a leap year, (holidays and public holidays are regarded as working days), hence some employers may use the exact number of working days in a year to determine the daily rate. Where an employee commences or ceases employment mid-month, he is paid for the number of days actually worked in that month. For 2023, where the working week is Monday to Friday, there are 260 working days.

Example 3

An employee commenced employment in mid-March and is due to be paid for 15 days (3 weeks) worked in March. He has an annual salary of €25,000, which equates to €2,083.34 per month. Calculate his gross pay for March (15 days) assuming there are:

- (a) 260 working days in the year, and
- (b) 261 working days in the year.

Solution 3

(a) €25,000 / 260 days x 15 days =	€1,442.31
(b) €25,000 / 261 days x 15 days =	€1,436.78

3.2 Number of Days in a Calendar Year

Another method of calculating the daily rate of pay is where the employer divides the annual salary by the total number of days in the year (365 or 366 in a leap year), including the days which the employee does not work. Where an employee commences employment mid-month, he is paid based on the remaining number of calendar days in the month inclusive of the start date, or in the event of a cessation he is paid for the number of calendar days up to and including the date of cessation. However, this calculation may be contrary to the principle that employees are only paid for time worked.

Example 4

Using this method and an annual salary of €25,000, calculate how much should be paid to an employee who commences employment in mid-March, based on 21 calendar days remaining in March.

$$€25,000 / 365 \text{ days} \times 21 \text{ days} = €1,438.36$$

3.3 Monthly Pay divided by number of working days in the month

Another method of calculating the daily rate of pay is where the employer divides the monthly salary by the number of working days in the month. Where an employee commences, or leaves,

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employment mid-month, he is paid based on the number of days worked in that month. This method tends to give different results, depending on the month in which the commencement or cessation occurs. For example, February generally has 20 working days, but another month could have up to 23 working days (e.g. March and August in 2023).

Example 5

Using the same details as provided in Example 3 above, assuming the employee commenced in March and there are 23 working days in March, calculate how much should be paid to a new employee who works 15 days in March:

$$\begin{aligned} \text{€25,000 / 12 months} &= & \text{€2,083.34} \\ \text{€2,083.34 / 23 days} \times 15 \text{ days} &= & \text{€1,358.70} \end{aligned}$$

If the employee was to be paid for 15 days worked in February, using this method, his gross pay would be calculated as follows:

$$\text{€2,083.34 / 20 days} \times 15 \text{ days} = \text{€1,562.51}$$

3.4 Certain Public Sector Calculations

In the Public Sector, many organisations calculate an employee's weekly pay by dividing the annual salary by 52.18 weeks which is the average number of weeks per year calculated over a 4 year period ($365 \text{ days} + 365 \text{ days} + 365 \text{ days} + 366 \text{ days} = 1,461 \text{ days} / 4 \text{ years} = 365.25 \text{ days} / 7 \text{ days} = 52.18 \text{ weeks}$).

This is to take into account a leap year occurring every four years. Once the weekly rate is calculated, the daily rate is then calculated by dividing the weekly rate by the number of working days in the week.

Example 6

Using the same details as provided in Example 3 above, except the individual is employed in the public sector.

$$\begin{aligned} \text{€25,000 / 52.18 weeks} &= & \text{€479.11 per week} \\ \text{€479.11 / 5 days} &= & \text{€95.82 daily rate} \\ \text{€95.82} \times 15 \text{ days} &= & \text{€1,437.30} \end{aligned}$$

As can be seen from the above examples, the outcome for the employee can be significantly different depending on which method of calculation the employer uses. For this reason, best practice is to include the method of calculation in the employee's statement of terms and conditions of employment or staff handbook.

The same difficulties tend not to arise as often on weekly, fortnightly or four-weekly payrolls. In the majority of cases the employer calculates the daily rate of pay by dividing the salary by the pay frequency, and then dividing the amount per pay frequency by the number of working days in the pay frequency. However, some employers will calculate the daily rate of pay for starters and leavers based on the number of working days in the calendar year, number of days in the calendar year, number of working days in the calendar month, etc. regardless of the pay frequency.

Example 7

John commenced employment and will receive an annual salary of €20,000 which will be paid fortnightly. John works a 5 day week. He commenced employment on a Thursday, and hence for the first fortnight, John is to be paid for 7 days (2 days in the first week and 5 days in the second week). Calculate how much John should be paid in his first payment.

$$\begin{aligned} \text{€20,000 / 26 fortnights} &= \text{€769.23 per fortnight} \\ \text{€769.23 / 10 days} &= \text{€76.92 per day} \\ \text{€76.92} \times 7 \text{ days} &= \text{€538.44} \end{aligned}$$

4. Calculation of Overtime Rates

Whether or not an employee is entitled to be paid for working overtime, and if so, what rate of pay he receives, will depend on the employee's statement of terms and conditions of employment. There is no legislation applicable to overtime rates of pay in general, however certain Collective Agreements set out specific terms in relation to the overtime rates which must be paid, and for what time periods overtime is payable. For example, in the contract cleaning industry, overtime is payable as follows:

- The first 6 hours of overtime worked after 40 hours up to 46 hours per week (Monday to Sunday) are payable at the basic hourly rate.
- Overtime rates are payable after 46 hours worked Monday to Sunday, as follows:
- Time and a half is payable for the first 4 hours and double time thereafter,
- Sunday overtime is payable at double time.

The terms and conditions for overtime payments for employers who are not covered by a Collective Agreement should be included in the employee's statement of terms and conditions of employment to avoid any potential disputes. Disputes can arise as to whether an employee will receive any payment or receive time off in lieu, will he receive a flat basic rate for the overtime hours, or will he receive a premium rate (e.g. time and a half or double time)? Many employees expect overtime rates to be at the rate of time and a half or double time, however some employers use time and a quarter or time and a third as a premium rate for overtime.

Where an employee is paid a weekly wage, how is the hourly rate of pay calculated? For example, an employee works a five day week from 9am to 5pm with an hour off for lunch each day. Is the hourly rate of pay calculated as 1/40th (total hours per week) of the weekly pay or 1/35th (number of hours actually worked) of the weekly pay? If an employee earns €500 per week, is the hourly rate €12.50 (€500 / 40 hours) or is the hourly rate €14.29 (€500 / 35 hours)?

If the above employee was to receive overtime at the rate of time and a half, is he entitled to €18.75 per hour (€12.50 x 1.5) or €21.44 (€14.29 x 1.5)?

The answer to this question will depend on the statement of terms and conditions of employment. However, in many industries the trend is that employees are paid for the hours they work, and lunch breaks are unpaid.

Example 8

Kevin works a 37.5 hour week and earns €562.50 per week. In addition, he works 12 hours' overtime for which he will be paid at time and a half, and 3 hours for which he will receive double time. Calculate his gross pay this week.

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Solution 8

Kevin has an hourly rate of €15 per hour (€562.50 / 37.5 hours). Kevin's gross pay is calculated as follows:

Basic Salary		€562.50
Overtime (time and a half)	$12 \text{ hours} \times €15 \times 1.5 =$	€270.00
Double time	$3 \text{ hours} \times €15 \times 2 =$	<u>€90.00</u>
Total Gross Pay		€922.50

5. Shift Premiums

Some employees may be employed in shift work, which is more common in manufacturing industries. For example, an employee may have a rotating 3 week work cycle as follows:

	Commencement Time	Finish Time
Week 1:	8.00am	4.00pm
Week 2:	4.00pm	12.00am
Week 3:	12.00am	8.00am

In this type of situation, it is common for employees to receive a shift premium as an additional incentive due to the nature of the work and the irregular hours. Again, as with the conditions for the payment of overtime rates, any conditions relating to the payment of a shift premium should be included in the statement of terms and conditions of employment. A shift premium is generally calculated as a percentage of the basic hourly rate for the duration of the shift. However, if an employee is required to work overtime, in some instances the shift premium may also be payable for the additional overtime hours. Generally speaking, the shift premium does not affect the calculation of overtime rates, as overtime rates tend to be based on the basic hourly rate of pay.

Example 9

James is employed in shift work and works 36 hours per week. He has a basic rate of €20 per hour. In addition, he receives a 15% shift premium for each hour worked including overtime hours, which is calculated based on the basic hourly rate of pay. James also worked 3 hours overtime for which he is paid at time and a half. Calculate his gross pay this week.

Solution 9

James has an hourly rate of €20 per hour. James' shift premium amounts to €3.00 per hour (€20 x 15%).

Basic Salary	$36 \text{ hours} \times €20 =$	€720.00
Shift Premium	$39 \text{ hours} \times €3.00 =$	€117.00
Overtime (Time and a half)	$€20 \times 1.5 \times 3 \text{ hours} =$	<u>€90.00</u>
Total Gross Pay		€927.00

6. Commission and Bonuses

Employees employed in a sales capacity are frequently paid on a commission basis. Employees may be set targets and depending on whether or not an employee meets or exceeds his target, he may receive a commission payment. In this type of scenario an employee may receive a low basic salary which is supplemented by the commission earned by the employee. This is similar to a performance related bonus i.e. where an employee performs well, he receives a bonus payment.

Example 10

Laura works in a sales capacity for ABC Ltd. She receives a basic salary of €3,000 per month. When Laura's sales figures exceed €25,000 per month, she receives a 5% commission on any sales in excess of this amount. Calculate Laura's gross pay this month assuming she is paid commission on €37,500 of sales.

Solution 10

Laura's commission is calculated as follows:

Total Sales	€37,500
Target	<u>€25,000</u>
Excess	€12,500
Commission	€12,500 x 5% =
Basic Salary	€625.00
Total Gross Pay	€3,000.00
	€3,625.00

7. Calculation of Arrears

It frequently happens in payroll that an arrears payment has to be calculated and paid to an employee. This may happen for several reasons such as national wage agreements, employees set up on the incorrect increment scale, employees being awarded increases which are back dated or which were not relayed to the payroll administrator in a timely manner, etc. In this situation the payroll administrator is required to calculate an arrears amount which must be processed in addition to the normal wages. This can be best explained by an example.

Example 11

Gerry works for ABC Ltd. He earns €30,000 a year (€2,500 per month). The payroll administrator was informed at the beginning of August that he is due a 5% pay increase which is to be backdated to 1st January. Calculate his gross pay for August to include his revised salary and any arrears due.

Solution 11

Gerry's amended monthly salary effective from the 1st August is €2,625 (€30,000 + €1,500 (5%) = €31,500 / 12 months). Gerry's arrears are calculated as follows:

Salary for 7 months (January to July)	€2,500 x 7 months =	€17,500.00
5% Increase due (Arrears)	(€17,500 x 5%) =	€875.00
Revised monthly salary		€2,625.00
Total gross pay for August		€3,500.00

Example 12

Mike works for DEF Ltd. He earns €11.50 per hour and is paid fortnightly. The payroll administrator was informed in fortnight 14 that he is due a 3% pay increase which is to be backdated to fortnight 7.

The following are the details of the hours worked by Mike during the period from fortnight 7 to fortnight 13 inclusive:

Basic hours:	434 hours
Overtime @ 1.5:	26 hours
Double time:	9 hours

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<i>Annual Leave:</i>	<i>35 hours (not included above)</i>
<i>Public Holidays:</i>	<i>21 hours (not included above)</i>

Calculate Mike's gross pay for fortnight 14 to include 70 hours basic and 3 hours overtime at time and a half at the revised rates of pay and include any arrears due for the above period. It can be assumed that annual leave and public holidays are paid at the basic hourly rate.

Solution 12

Mike's amended hourly rate has increased to €11.85 (€11.50 + 0.35 (3%)) and his amended overtime and double time rates are €17.78 (€11.85 x 1.5) and €23.70 (€11.85 x 2) respectively.

Arrears Calculation:	Hours	x	Difference in rates	
<i>Basic hours:</i>	434 hours	x €0.35	(€11.85 - €11.50) =	€151.90
<i>Overtime @ 1.5:</i>	26 hours	x €0.53	(€17.78 - €17.25) =	€13.78
<i>Double time:</i>	9 hours	x €0.70	(€23.70 - €23.00) =	€6.30
<i>Annual Leave:</i>	35 hours	x €0.35	(€11.85 - €11.50)	€12.25
<i>Public Holidays:</i>	21 hours	x €0.35	(€11.85 - €11.50) =	<u>€7.35</u>
<i>Total Arrears</i>				€191.58
<i>Salary in fortnight 14:</i>	70 hours	x €11.85 =		€829.50
<i>Overtime in fortnight 1:</i>	3 hours	x €17.78 =		<u>€53.34</u>
<i>Total gross pay for fortnight 14:</i>				€1,074.42

CHAPTER 3

The PAYE System

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1. Introduction

The Irish income tax year is based on the calendar year, meaning that the income tax year covers the period 1st January to 31st December. Income tax is deducted by employers from payments made to employees or office holders (e.g. a company director, judges, councillors, members of boards of public service bodies, etc.) under what is known as the Pay As You Earn (PAYE) system. In addition, employers must deduct Pay Related Social Insurance (PRSI) and Universal Social Charge (USC) where required. For the purpose of operating the PAYE system, any references to an employee in this text should be read as including office holders.

Income tax, PRSI and USC are deducted for each income tax year and employers require information in respect of each employee for each income tax year, in order to enable the employer to deduct the correct liabilities. The information, which an employer needs to operate the PAYE system, is normally contained in a “Revenue Payroll Notification”, which is discussed in more detail later in this chapter. For the remainder of this text, an abbreviated title of “RPN” will be used. This chapter focusses on the information required by an employer to calculate Income Tax under the PAYE system. The operation of PRSI and USC will be discussed in later chapters.

2. The Pay As You Earn (PAYE) System

The PAYE system is a tax deduction system, which must be operated by each employer who pays remuneration (i.e. wages or salaries) to employees. The employer must calculate any Income Tax due and deduct it from an employee’s wages or salary, each time a payment of wages, or salary, is made. The deduction of Income tax under the PAYE system is often referred to as ‘withholding’.

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tax’ or “PAYE withholding” as employers are required to withhold the amount of tax due from the employee’s wages and pay it over to Revenue on behalf of the employee.

The PAYE system was introduced in 1960 to assist employees pay their income tax. Prior to then, employees had to pay their income tax on the same basis as self-employed people. You can see therefore, that the introduction of the PAYE system was viewed as a positive move for employees. Instead of paying income tax in one instalment, the PAYE system divides the income tax year into 52 weekly, 26 fortnightly, 13 four-weekly or 12 monthly periods and deducts an employee’s Income tax, on a weekly, fortnightly, four-weekly or monthly basis, according to how frequently he is paid.

The PAYE system operates on a payments (receipts) basis, which means that tax is deducted from wages as they are paid to employees, regardless of when the wages were earned. When aligning payroll weeks to the Income tax calendar, the alignment should be based on the pay date falling within that week as opposed to the week the money was earned.

Various changes have been made to the PAYE system over the years, however one of the most significant changes to the PAYE system was the introduction of a real-time reporting system (PAYE Modernisation) on 1st January 2019 which requires employers to submit payroll information to Revenue on or before the date the employee is paid. Previously, Revenue was only informed what each employee was paid in a tax year when the employer submitted his P35 End of Year Return in respect of that tax year.

3. Employer Registration System

Since 1st January 2019, every employer who intends to pay wages to an employee is obliged to register with Revenue as an employer prior to making a payment to an employee.¹ Revenue maintains a register of all registered employers.

An employer (being an individual) who makes payments to a domestic employee is not required to register as an employer where the payments are less than €40 per week if the employer has only one such employee. A domestic employee is an employee who is employed solely on domestic duties (including the minding of children) in the employer’s private dwelling house.²

The majority of employers are required to electronically register as an employer with Revenue through ROS (under the tax registration section in the “My Services” page). The employer is then electronically issued with an employer registration number, which is unique to him. Any change in the employer’s name or address should also be notified to Revenue through ROS. An employer can be an individual, a partnership, a company or an unincorporated body. A company must register as an employer and operate the PAYE system on the income of directors, even if there are no other employees, as such income is taxable under the PAYE system.

Previously, registration as an employer was carried out by completing a Form TR1 (sole trader or a partnership), a Form TR2 (company) or a Form PREM Reg (if the employer was already registered for Income tax or Corporation tax). These registration forms continue to be required for non-resident companies or individuals and unincorporated bodies.

¹ Taxes Consolidation Act 1997, Section 988

² Taxes Consolidation Act 1997, Section 986 (6)(b)

Once the employer is issued with this number, it should be used in all correspondence with Revenue as it is unique to him, and it is used to identify that employer. Employers' names and addresses may change over time, but their employer registration number will stay the same.

An employer may have more than one employer registration number (e.g. where he wishes to have a separate registration number and separate returns for company executives or pensioners), but it is more common for an employer to have only a single employer registration number. The use of multiple registration numbers involves extra administration for the employer as he must make separate Payroll Submissions to Revenue under each employer registration number. Generally, payments will be made separately under each registration number, however Revenue can facilitate the total payment being made under the principal registration number. Also, if an employee moves from one registration number to another the employer must cease them on the first employment and commence them in the second employment.

If an employer does not register voluntarily, Revenue may issue a compulsory registration where they have reason to believe that the employer should be registered as an employer and has not already done so. In addition to seeking registration, Revenue may issue an estimate for any Income tax, PRSI and USC which should have been paid to date.

3.1 Register of Employees

Once an employer is registered with Revenue as an employer, he is required to keep a Register of Employees.³ This register, which can be kept in electronic or paper format, must contain the following details in respect of each employee, including casual and part-time employees:

- Name, Address and Personal Public Service Number (PPSN) of the employee,
- Date of commencement of the employee, and
- Date of cessation of the employee, if applicable.

The register should be kept at the normal place of employment of each employee or at the employer's main place of business (e.g. a head office), even where the employer uses the services of a bureau or agency to perform the payroll function. An employer is obliged to produce the register on request by a Revenue officer.

An employer shall be liable to a penalty of €4,000 where he fails to maintain a Register of Employees in respect of all employees⁴. If the employer is a company, the company secretary is liable to a penalty of €3,000. If an employer fails to produce a copy of the register when requested to do so by a Revenue officer, the employer shall be liable to a penalty of €4,000.

4. PPS Numbers

A Personal Public Service (PPS) number (PPSN) is a unique reference number that helps individuals access social welfare benefits, public services and information in Ireland. If an individual takes up employment in Ireland, he will need a PPSN to register with Revenue. An employer should only seek a PPSN if an employee is taking up employment with the employer, it should not be requested at interview stage.

The Client Identity Services section of the Department of Social Protection (DSP) is responsible for the management of PPSNs. Prior to 2013, PPSNs primarily consisted of seven digits and one

³ Taxes Consolidation Act 1997, Section 988A

⁴ Taxes Consolidation Act 1997, Section 987

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letter (e.g. 1234567A). These existing PPSNs remain unchanged and continue to be valid. However, some PPSNs issued in earlier years, to a married woman consisted of seven digits and two letters (e.g. 1234567AW). The DSP are phasing out these “W” PPSNs and issuing a new PPSN to these individuals. All PPSNs currently issued consist of seven digits and two letters. The first letter acts as a check character, and the second letter will commence with the letter “A” initially and when these are exhausted, by “B”, then “C” etc. e.g. 4567123DA.

Every individual born in Ireland since 1971 is allocated a PPSN when their birth is registered. Otherwise a PPSN would have been issued to an individual if they started work after 1979 or are in receipt of a social welfare payment.

Where an individual commences employment and does not have a PPSN, (such as a foreign employee commencing work in Ireland for the first time), he can apply online or in person for a PPSN as follows:

1. Applying online via www.MyWelfare.ie (individuals must have basic MyGovID account which allows them to access MyWelfare and other Government services in Ireland). If the individual is living in the State, he will need to upload the following:
 - Documentary evidence to verify the individual’s identity (long version of birth certificate, passport, national identity card or driving licence).
 - Proof of Address which can be a household utility bill, tenancy agreement or financial statement, etc. which must not be older than 3 months. If the individual is staying with friends or relatives, an original household bill with a note from bill holder confirming residency at the bill address may also be accepted.
 - Evidence of why the PPSN is needed (e.g. commencing employment, applying for a social welfare payment, etc.). If the individual is applying for a PPSN to take up employment he must have a signed offer of employment from the employer confirming the start date. The letter should be on company headed paper showing the employer’s contact details and employers company registered number.
 - Contact telephone number.
2. Apply in person by:
 - Attending, in person, at a DSP Registration Centre (**Note:** Dublin centres only deal with appointments booked online at www.MyWelfare.ie)
 - Completing a PPSN application Form REG 1, and
 - Presenting documentary evidence as requested in the application form to verify the individual’s identity (long version of birth certificate, passport or driving licence), reason why a PPSN is required, etc.

If an individual is non-resident, unable to attend due to illness or working abroad, it is not necessary for them to attend a DSP office. The individual can contact the Client Identity Services by completing the online Enquiry Form to have the necessary forms sent by post.

Further information on how to apply for a PPSN is available from the DSP at: <https://www.gov.ie/en/service/12e6de-get-a-personal-public-service-pps-number/>

A PPSN is very important and the employee should keep a permanent record of it. It should always be quoted when dealing with Revenue or the DSP.

5. Commencement of Employment

When a new employee commences employment, the steps involved in registering the individual as a new employee will depend on whether this is his first time working in Ireland or if he has previously worked in Ireland.

5.1 Individual's first employment in Ireland

When an individual takes up his first employment in Ireland, he will need to register as an employee for tax purposes, if not already registered. In general, there are 2 main categories of employees who will need to register for tax; Irish nationals commencing employment in Ireland for the first time, and foreign nationals who commence working in Ireland.

Once the individual has obtained his PPSN from the DSP, he must register his employment online using Revenue's Jobs and Pensions service. In order to access the Jobs and Pensions service the individual must first register for myAccount on the Revenue website.
<https://www.ros.ie/myaccount-web/register.html?execution=e1s1>

The new employment can be registered in advance of the start date. The employer should supply the individual with the following information needed to complete the online application:

- Employer tax registration number,
- Start date of the new job,
- Frequency of payment, and
- Staff number if one has been allocated.

Once the individual has successfully registered his new employment, Revenue will send the employee a Tax Credit Certificate and the employer can then request an RPN from Revenue so that the correct tax and USC deductions can be made from his wages.

The employer should operate the Emergency Basis of tax to any payment made to the employee pending the receipt of an RPN. Any payments made to an employee must be reported to Revenue in a Payroll Submission on or before the date the employee is paid regardless of whether the employee has obtained his PPSN or whether the employer has received an RPN.

As an exception to the above rules which require employees to register their first employment in Ireland, Revenue has put a system in place to facilitate the automatic registration of Ukrainian refugees with Revenue systems. This applies to those arriving into the country who engaged with the Dept. of Social Protection (DSP) and received PPS numbers at the relevant hubs set up for this crisis. In implementing this change, consideration was given to the potential for a significant volume of registrations to be processed in a short timeframe and it was unlikely that many of those arriving in Ireland would have good English.

This change enables employers to automatically register the first employment in Ireland of these Ukrainians once they provide their PPSN to their employer, without the need for the individual to register the employment using the Jobs and Pension Service in MyAccount.

The automatic registration process will result in an RPN being made available by Revenue on request from the employer and will greatly reduce or eliminate the use of Emergency tax for these individuals. If they are in a position to do so, these individuals can check their registered jobs online using Revenue's myAccount service.

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5.2 Individual who was previously employed in Ireland

Where an individual was previously employed in Ireland, he should already be registered for tax purposes and hold a PPSN. In this instance, once the employee gives his PPSN to his employer, the employer can commence the employment on Revenue's records by requesting an RPN from Revenue.

The employer should operate the Emergency Basis of tax to any payment made to the employee pending the receipt of an RPN. Any payments made to an employee must be reported to Revenue in a Payroll Submission on or before the date the employee is paid regardless of whether the employee has obtained his PPSN or whether the employer has received an RPN.

While not required to do so, this employee can also register a new employment online using the Jobs and Pensions service in myAccount. The employer would have to provide the employee with the same information as outlined in Section 5.1 above to enable the employee register the employment. Where the employee has registered the employment online, the employer can request an RPN for that employee from Revenue.

6. Definition of Pay

The PAYE system defines pay (technically known as emoluments) as an employee's pay before any deductions are made by the employer to include salary, wages, fees, pension, bonus, overtime pay, commission, holiday pay, sickness pay, allowances, etc. This definition includes the notional value of benefits in kind (non-cash payments) which must be recorded through payroll and are subject to Income tax, PRSI and USC. The overall combined amount of the above payments which an employee may receive is commonly referred to as "Gross Pay" before any deductions are made.

Income tax is calculated on an employee's "taxable pay" which is calculated as gross pay less certain deductions permitted by Revenue i.e. contributions to Revenue approved pension schemes, Permanent Health Insurance schemes and approved salary sacrifices.

7. Calculation of Income Tax under the PAYE System

Under the PAYE system Income tax is calculated at the appropriate rate, or rates, on a person's taxable pay to arrive at his gross Income tax liability. Each individual is allocated a standard rate cut-off point (SRCOP). This indicates how much of his income will be charged to income tax at the standard rate of tax. Any income received in excess of the SRCOP will be taxable at the higher rate of tax. The combined amount of tax is the individual's gross tax liability. The gross tax liability is then reduced by the amount of an individual's tax credits, to arrive at his net tax liability. These features will be explained in more detail later.

To summarise:

- Determine a person's taxable income
- Determine his SRCOP
- Calculate his gross income tax liability
- Deduct the amount of his tax credits
- The result is the person's income tax liability

8. Personal Tax Credits

Individuals are entitled to claim tax credits, which are used to reduce their income tax liability. Tax credits are granted for a tax year depending on a person's marital, civil partnership or parental

status and other personal circumstances. The qualifying conditions for tax credits are covered in detail in the chapter entitled “**Personal Tax Credits and Reliefs**”.

9. Tax Rates and Standard Rate Cut-Off Point (SRCOP)

There are currently two rates of income tax payable in Ireland, the standard rate of 20% and higher rate of 40%.

The SRCOP is the amount of a person’s income, which is liable to tax at the standard rate, also known as the 20% rate band. Any income in excess of this figure will be chargeable to tax at the higher rate. The annual SRCOP for a single person is €40,000. This means that if an individual earns *no more* than €40,000 per year, he will only pay tax at the standard rate. If his income exceeds €40,000, he will pay tax at the standard rate on the first €40,000 and the excess will be liable to tax at the higher rate.

The annual figure of €40,000 is equal to a weekly figure of €769.24 (€40,000 / 52 weeks) for the current tax year. If an individual earns *no more* than an average of €769.24 per week, he will only pay tax at the standard rate. The weekly SRCOP of €769.24 is calculated on a Cumulative Basis for most employees who are assessed under the Cumulative Basis (the Cumulative Basis is explained in the chapter entitled “Calculation of Income Tax under the PAYE System”). This means that even if an individual earns in excess of €769.24 in a single week, where his total earnings for the tax year to date do not average more than €769.24 per week, he will not be liable to pay income tax at the higher rate.

All individuals (i.e. employees, self-employed, pensioners, etc.) with income chargeable to tax in Ireland have an entitlement to a SRCOP based on their personal circumstances regardless of whether or not they are resident in Ireland.

9.1 Summary of SRCOP and Tax Rates

Single/Widowed Person or Surviving Civil Partner	First €40,000 @ 20% Balance @ 40%
Single/Widowed Person or Surviving Civil Partner, qualifying for the Single Person Child Carer tax credit	First €44,000 @ 20% Balance @ 40%
Married Couple or Civil Partnership, one Spouse or Partner with Income	First €49,000 @ 20% Balance @ 40%
Married Couple or Civil Partnership, both Spouses or Partners with income	First €49,000 plus an amount equal to the lower income (subject to a maximum of €31,000) @ 20% Balance @ 40%

9.2 Increase in the SRCOP

The SRCOP can be increased for an individual beyond the above figures, where the employee is entitled to tax relief at his marginal rate in respect of certain expenses such as:

- (i) Expenses which are wholly, exclusively and necessarily incurred in the performance of his duties (flat rate expenses),
- (ii) Contributions made to a Revenue approved Pension Scheme or Personal Retirement Savings Account (PRSA) where contributions are not paid by deduction from salary,

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- (iii) Payments made to a Revenue approved Permanent Health Insurance (PHI) scheme where the premiums are not paid by deduction from salary,
- (iv) Nursing home expenditure, excluding any non-medical related expenses,
- (v) Legally enforceable maintenance payments for a spouse or civil partner.

Revenue's method of granting tax relief during a tax year is to increase an individual's SRCOP by the annual amount of the expense, pension or PHI contribution and by increasing his tax credits by 20% of the amount. This ensures that the employee obtains tax relief at his marginal rate (either 20% or 40%) as appropriate. This is not a matter of concern for the employer. This will be dealt with by Revenue and will be reflected in the Tax Credit Certificate issued to the employee and the RPN issued to the employer.

In relation to the second and third points above, when Revenue calculate an individual's annual income tax liability on the end of year Statement of Liability, regardless of whether the pension contributions are paid by deduction from salary or paid directly by the employee to the pension company, tax relief is granted by deducting the pension contributions from the individual's income, as opposed to increasing the individuals tax credits and SRCOP.

9.3 Decrease in the SRCOP

Where an employee is in receipt of other income which is not subject to Income tax at source, such as a taxable payment from the DSP (e.g. Widow's, Widower's or Surviving Civil Partner Pension or State Pension (Contributory)) or untaxed investment or rental income which does not exceed €5,000 (excluding DSP payments) in the current tax year, the tax due on this income may be collected through the PAYE system.

The employee's SRCOP will be reduced by the annual value of the other assessable income, and the employee's annual tax credits will be reduced by the amount of the other income multiplied by the standard rate of tax.

Example 1

Pat Kelly is single and employed by Fiesta Ltd. In addition to his employment income, he has a rental profit of €1,500 after deduction of allowable expenses. Calculate Pat's annual SRCOP and tax credits assuming he made a request to Revenue for the tax on his rental income to be collected through the PAYE system.

Solution 1	SRCP	Tax Credits
Single Person	€40,000.00	€1,775.00
PAYE Tax Credit*		€1,775.00
Less Rental Profit	<u>€1,500.00</u>	€1,500.00 @ 20% = <u>€300.00</u>
Adjusted SRCP/Tax Credits	€38,500.00	€3,250.00

**Pat is entitled to the PAYE tax credit as he is in employment. Tax credits are explained in detail in the chapter dealing with Personal Tax Credits and Reliefs.*

However, where an employee has non-PAYE income which exceeds €5,000 (excluding DSP Payments) in the current tax year, the tax due on this income is collected through the self-assessment system rather than through the PAYE system.

Note: SRCOPs are reduced to deal with the taxation of Illness Benefit, Maternity Benefit, Adoptive Benefit, Health & Safety Benefit, Paternity Benefit, Parent's Benefit, which may also

result in an RPN being issued on the Week 1 Basis for that employee. This is covered in more detail in the Chapter entitled “**Taxation of Short-term Social Insurance Benefits**”.

10. Employee with Multiple Employments

An individual is only entitled to avail of his annual SRCOP and tax credits regardless of how many employments that person holds. Where an individual has more than one employment or pension, the SRCOP and tax credits can be split between the sources, as per the individual’s requirements.

For example, if a single individual is in receipt of an occupational pension of €20,000 and earns €12,000 from an employment, Revenue will generally allocate the SRCOP and tax credits of €40,000 and €3,550 respectively to the main source of income and issue an RPN with nil tax credits and nil SRCOP in respect of the second source of income. This could result in an overpayment of tax during the year, as the SRCOP (or tax credits) may not be fully utilised. In this example, the individual should contact Revenue to request that €20,000 of his SRCOP be allocated to his pension, and the balance transferred to his employment income. The employee could also request that his tax credits be re-allocated, if applicable. This re-allocation can be carried out by the individual on myAccount.

11. Income Tax Calendar

For Income tax purposes, the tax year is divided into 52 weeks, each of which is designated a number based on the income tax calendar. The first week runs from 1st to 7th January, the second week runs from 8th to 14th of January and so on.

It is the employee’s pay day which determines the tax week and not the period the money was earned. Hence if an employee earned money on 4th January but is paid on 9th January, as 9th January falls in the second week of the year it should be recorded as week 2. Employers should ensure that the calendar (weeks) in their payroll software is correctly aligned to the Income tax week based on the pay date.

A copy of the individual week numbers and the pay dates to which they refer is included in the information provided at the front of this text. It is important to understand the system of allocating numbers to weeks throughout the income tax year in order to fully understand how the PAYE system is operated.

12. Tax Deduction Cards

Prior to 2009, Revenue issued Tax Deduction Cards (TDCs) to employers who requested them. They were designed to help employers calculate the correct tax deductions in each week of the year. TDCs were extremely useful when calculations were done manually, but as most employers now use payroll software to operate the PAYE system, TDCs are largely redundant. Employers now receive an RPN for each of their employees which contains the employee’s tax credit, SRCOP, USC and LPT (Local Property Tax) which the employer requires to make the appropriate deductions from the employee’s wages.

An electronic TDC is available on the Revenue website at: <http://www.revenue.ie/en/employing-people/becoming-an-employer-and-ongoing-obligations/maintaining-your-records/electronic-tax-deduction-card-tdc.aspx> to assist employers who wish to record payroll information in this manner. The electronic TDC allows an employer to:

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- Complete the employee's record on screen,
- Save the record electronically on their computer,
- Print the record, and
- Print a blank Employee Deduction Record and complete it manually.

This electronic TDC is similar to the IPASS created TDC which appears in this text to assist the reader in calculating Income tax under the Cumulative, Week 1 or Emergency Basis.

Employers are reminded that regardless of what method they use to keep their records or do their calculations, a Payroll Submission must be submitted to Revenue on or before the date the employee is paid. Payroll Submissions are covered in detail in the chapter entitled “**Payroll Submissions**”.

13. Income Tax Calculations

Example 2

A single person has gross earnings of €250 per week. He has an annual SRCOP of €40,000 and tax credits of €3,550 (Single person tax credit of €1,775 and PAYE tax credit of €1,775). The tax calculation for the first week is as follows:

Taxable pay		€ 250.00
SRCP	€ 40,000.00 / 52	€ 769.24
Excess of income over SRCP		€ 0.00
Tax on income up to SRCP	€ 250.00 @ 20%	€ 50.00
Tax on income in excess of SRCP	€ 0.00 @ 40%	€ 0.00
Gross tax (tax @ standard rate + tax @ higher rate)		€ 50.00
Less tax credits	€ 3,550.00 / 52	€ 68.27
Tax liability (gross tax - tax credits)		€ 0.00

Note: Tax credits are not refundable. In this case the employee simply has a nil tax liability for this pay period. The unused tax credit in this example of €18.27 (€68.27 - €50.00) is carried forward and offset against tax due in the subsequent pay period(s) where the employee is taxed on the Cumulative Basis. A tax refund will only arise where the cumulative tax liability for the current pay period is less than the cumulative tax paid to date (cumulative tax paid to the previous pay period).

Example 3

A single person has gross earnings of €375 per week. He has an annual SRCOP of €40,000 and tax credits of €3,550 (Single person tax credit of €1,775 and PAYE tax credit of €1,775). The tax calculation for the first week is as follows:

Taxable pay		€ 375.00
SRCP	€ 40,000.00 / 52	€ 769.24
Excess of income over SRCP		€ 0.00
Tax on income up to SRCP	€ 375.00 @ 20%	€ 75.00
Tax on income in excess of SRCP	€ 0.00 @ 40%	€ 0.00
Gross tax (tax @ standard rate + tax @ higher rate)		€ 75.00
Less tax credits	€ 3,550.00 / 52	€ 68.27
Tax liability (gross tax - tax credits)		€ 6.73

Example 4

A single person has gross earnings of €750 per week. He has an annual SRCOP of €40,000 and tax credits of €3,550 (Single person tax credit of €1,775 and PAYE tax credit of €1,775). The tax calculation for the first week is as follows:

Taxable pay		€ 750.00
SRCP	€ 40,000.00 / 52	€ 769.24
Excess of income over SRCP		€ 0.00
Tax on income up to SRCP	€ 750.00 @ 20%	€ 150.00
Tax on income in excess of SRCP	€ 0.00 @ 40%	€ 0.00
Gross tax (tax @ standard rate + tax @ higher rate)		€ 150.00
Less tax credits	€ 3,550.00 / 52	€ 68.27
Tax liability (gross tax - tax credits)		€ 81.73

Example 5

A married couple, with one spouse working, has gross earnings of €1,000 per week. She has an annual SRCOP of €49,000 and tax credits of €5,325 (Married couple tax credit of €3,550 and PAYE tax credit of €1,775). The tax calculation for the first week is as follows:

Taxable pay		€ 1,000.00
SRCP	€ 49,000.00 / 52	€ 942.31
Excess of income over SRCP		€ 57.69
Tax on income up to SRCP	€ 942.31 @ 20%	€ 188.46
Tax on income in excess of SRCP	€ 57.69 @ 40%	€ 23.07
Gross tax (tax @ standard rate + tax @ higher rate)		€ 211.53
Less tax credits	€ 5,325.00 / 52	€ 102.41
Tax liability (gross tax - tax credits)		€ 109.12

CHAPTER 3

Employee Tax Credit and Universal Social Charge Certificate

TAX CREDIT AND UNIVERSAL SOCIAL CHARGE CERTIFICATE							
FOR THE YEAR 1 JANUARY 2023 TO 31 DECEMBER 2023							
Tax Credits						€	
Personal Tax Credit						1,775.00	
PAYE Tax Credit						1,775.00	
						Gross Tax Credits: 3,550.00	
						Net Tax Credits: 3,550.00	
Tax Rate Bands						€	
Rate Band 1						40,000.00	
The amount of your income taxable at 20%						40,000.00	
All income over €40,000.00 is taxable at 40%							
USC Rate Bands						€	
Rate Band 1						12,012.00	
The amount of your income chargeable at 0.5%						12,012.00	
Rate Band 2						10,908.00	
The amount of your income chargeable at 2%						10,908.00	
Rate Band 3						47,124.00	
The amount of your income chargeable at 4.5%						47,124.00	
All income over €70,044.00 is chargeable at 8%							
Allocation of your Tax Credits and Rate Bands (Subject to Rounding)							
Employer	Tax Credits €			Tax Rate Bands €			
	Yearly	Monthly	Weekly	Rate Band	Yearly	Monthly	
ABC LTD	3,550.00	295.84	68.27	20%	40,000.00	3,333.34	
DEF LTD	-	-	-	20%	-	-	
Allocation of your USC Rate Bands (Subject to Rounding)							
Employer	USC Rate Bands €			Rate Band	Yearly	Monthly	
ABC LTD	Income chargeable at 0.5%			Income chargeable at 0.5%	12,012.00		
					1,001.00		
	Income chargeable at 2%			Income chargeable at 2%	231.00		
					909.00		
DEF LTD	Income chargeable at 4.5%			Income chargeable at 4.5%	209.77		
					906.24		
	Income over €70,044.00 in this employment is chargeable at 8%			Income over €70,044.00 in this employment is chargeable at 8%			
	All income in this employment is chargeable at 8%						

CHAPTER 4

Personal Tax Credits and Reliefs

- 1. Introduction**
 - 2. Personal Tax Credits and Reliefs**
 - 3. Health Expenses**
 - 4. Tax Relief for Expenses incurred in Employment**
-

1. Introduction

Every individual resident in Ireland is obliged to pay income tax on his income. There are differences in the way in which single, married, civil partners and divorced people are treated for income tax purposes and how their tax liability is calculated, but the same principles apply to all.

An individual's taxable income is subject to income tax, and this is known as a person's gross income tax liability. However, each individual is entitled to tax credits, which are used to reduce his gross tax liability. The amount of tax credits which a person is entitled to depends on his personal circumstances.

Where a person's tax credits exceed his gross income tax liability, no income tax will be payable. It is important to note that tax credits can only be used to reduce an individual's gross income tax liability. Unused tax credits cannot be refunded where they exceed an individual's gross income tax liability.

1.1 Taxation of Employees

Self-employed people pay their income tax directly to the Collector General through what is known as the self-assessment system. Employees however have their earnings taxed by their employer through the PAYE system. This means that they do not have to make separate returns and payments to the Collector General where their only source of income is wages or a salary in Ireland, as the PAYE system is designed to deduct their correct income tax liability and have it remitted to the Collector General.

The amount of income tax, which a person will pay, not only depends on how much that person earns, but also on the amount of that person's tax credits and SRCOP which is determined by his personal circumstances. Single, married, civil partners and separated or divorced people all pay income tax according to their personal circumstances.

2. Personal Tax Credits and Reliefs

It is important to bear in mind that with any tax credit, assuming an individual meets the qualifying conditions, the entitlement is limited to the extent that it reduces the individual's tax liability to nil. This means that an individual cannot obtain a refund of any unused tax credits, nor can they be carried forward to a subsequent year, carried back for use in a previous year, or transferred to another person (other than between spouses or civil partners who are assessed to tax on the joint assessment or separate assessment basis, and subject to certain restrictions).

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Where an individual has not received the appropriate tax credits due to him, a claim for any tax refund due in respect of any of the last 4 tax years can be submitted to Revenue.

The following annual tax credits apply for the current tax year.

Note: The full annual amount of an employee's tax credits will be stated on a Revenue Payroll Notification (RPN) while the employee's Tax Credit Certificate will identify each tax credit claimed by the employee. While the full amount is stated on an RPN, an employee will only get to utilise the full amount of these credits where he has sufficient income.

PAYE Tax Credit

An individual who is in receipt of payments, which are taxable under the PAYE system, is entitled to claim a PAYE tax credit¹ (also known as an Employee tax credit or Schedule E tax credit) of €1,775 for the current year.

The PAYE tax credit may not be claimed by:

- Self-employed persons, as their income is not taxed under the PAYE system (unless they have a separate source of income that is subject to tax under the PAYE system).
- An individual who is employed by his/her spouse or civil partner, including where the spouse or civil partner is a partner in a partnership.
- Proprietary directors (i.e. someone who owns or controls, directly or indirectly, more than 15% of the shares in the company in which they are employed).
- An individual who is employed by the company in which their spouse or civil partner is a proprietary director.
- Children who are employed by their parent, or by a partnership in which their parent is a partner or by a company in which their parent is a proprietary director. This includes children employed by their parent's civil partner including where the civil partner is a partner in a partnership or proprietary director of the company which employs the child. However, an employer's children (or child of a civil partner) are entitled to the PAYE tax credit provided they are employed on a full time basis by their parent, or by the parent's partnership or company. To be entitled to the PAYE tax credit (or part thereof) the child must earn at least €4,572 per tax year and income tax must be deducted from his wages under the PAYE system. An employer's child who is a student or part-time employee and is employed by the parent would generally not qualify for the PAYE tax credit.

People who are in receipt of an occupational pension or claiming a taxable payment (e.g. State Pension (Contributory), Illness Benefit, etc.) from the Department of Social Protection (DSP) also qualify for the PAYE tax credit. Where a person is Irish resident and is in receipt of a social security pension from another EU country, he is also entitled to the PAYE tax credit in respect of that pension. Individuals who are resident in Ireland but employed outside of the State (e.g. Northern Ireland), would generally be entitled to claim this tax credit.

The PAYE tax credit is calculated as 20% of a person's PAYE income (strictly speaking Schedule E income) or €1,775, whichever is the lesser amount. To qualify for the full amount of the PAYE tax credit for the current year, an individual must earn €8,875 (20% of €8,875 = €1,775). Therefore, a person who only has PAYE income of €6,000 will be entitled to a maximum PAYE tax credit of €1,200 (€6,000 x 20%).

¹ Taxes Consolidation Act 1997, Section 472

For a married couple or civil partnership where both spouses or civil partners are in employment, the PAYE tax credit may be claimed by each of them. The PAYE tax credit is not transferable between spouses or civil partners, or between anyone else and an individual may only receive a maximum PAYE tax credit of €1,775 regardless of how many different sources of income he might have.

Earned Income Tax Credit

The earned income tax credit² was introduced on 1st January 2016 to help bridge the gap between the tax treatment of self-employed people and PAYE taxpayers. This tax credit is available to people with “qualifying earned income” (i.e. earned income which does not qualify for the PAYE tax credit).

This mostly applies to the trading or professional income of self-employed people, but it is also available to other individuals who, although not self-employed, have earned income which does not qualify for the PAYE tax credit, as follows:

- Payments made by an individual (or by a partnership in which the individual is a partner) to the spouse, civil partner, child or child of the civil partner of the individual,
- Payments made by a company to a proprietary director (i.e. any person who owns or controls, directly or indirectly, more than 15% of the shares in the company) of that company, or to the spouse, civil partner, child or child of the civil partner of a proprietary director.

The tax credit is calculated as 20% of the earned income of the individual subject to a maximum of €1,775 for the current year. To qualify for the full amount of the Earned Income tax credit for the current year, an individual must earn €8,875 (20% of €8,875 = €1,775). Where an individual qualifies for both the earned income tax credit and the PAYE tax credit, the combined amount cannot exceed €1,775. Similar to the PAYE tax credit, the earned income tax credit applies to the income of each spouse in a married couple or partner in a civil partnership. If one spouse or civil partner does not use all or part of this tax credit, the balance is not transferable to the other spouse/civil partner.

As outlined under the PAYE tax credit, children of an employer/proprietary director qualify for the PAYE tax credit where the conditions outlined in that paragraph are met.

Single/Widowed Person or Surviving Civil Partner Tax Credit

A single person (someone who is not married or in a civil partnership) is entitled to claim the single person tax credit³ of €1,775 in the current year. This tax credit can also be claimed by a person who is widowed or a surviving civil partner in tax years following the year of bereavement, assuming they have not remarried. It should be noted that special treatment applies to the tax year in which someone becomes a widow, widower or a surviving civil partner.

Example 1

Joan is single and is employed on a casual basis in a local shop. She earns €3,750 in the current tax year. What tax credits is Joan entitled to for the current year?

² Taxes Consolidation Act 1997, Section 472AB

³ Taxes Consolidation Act 1997, Section 461

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Solution 1

Joan is entitled to the single person tax credit of €1,775. She is also entitled to the PAYE tax credit. However, the maximum PAYE tax credit due to her is calculated as €750 (€3,750 @ 20%). The total tax credits due are €2,525 (€1,775 + €750). However, she is only entitled to tax credits to the extent they reduce her tax liability to nil. Of the total credits (€2,525) available to her, Joan only utilises €750, and the balance is unused.

Married Couple or Civil Partnership Tax Credit

The married couple or civil partnership tax credit⁴ of €3,550 is due to a couple, who are jointly assessed for income tax purposes; or to a couple who are living apart, where one spouse or civil partner is being maintained by the other and maintenance payments are not taken into account when calculating the payer's income tax liability. It can also be claimed in relation to maintenance payments, where a couple are divorced under the **Family Law (Divorce) Act 1996**, remain unmarried, and both are resident in the State. The married couple or civil partnership tax credit is allocated to one of the spouses or civil partners and is equivalent to two single person's tax credits.

Single Person Child Carer Tax Credit

The single person child carer tax credit⁵ of €1,650 is granted in addition to the single, widowed or surviving civil partner tax credit to an individual who has a "qualifying child" residing with him or her for the whole or greater part of the tax year. This person is known as the "Primary Claimant". The person in receipt of the single person child carer tax credit is also entitled to an increased SRCOP of €44,000.

The primary claimant may relinquish the right to claim the tax credit in favour of another individual provided that the child resides with the other person (the "Secondary Claimant") for at least 100 days on aggregate in the tax year. For the purpose of this limit, a day includes the greater part of a day. However, neither the tax credit nor the increased SRCOP can be apportioned between a primary and secondary claimant.

The single person child carer tax credit is not available to any person (primary or secondary claimant) who is:

- Married, unless separated under a deed of separation, an order of the court, or separated in such circumstances that it is likely to be permanent, or
- In a civil partnership, unless the civil partners are living separately in circumstances that a reconciliation is unlikely, or
- Jointly assessed to tax as a married person or civil partner, or
- Widowed or became a surviving civil partner in the year for which he or she is making a claim, or
- Cohabiting with another person.

A "qualifying child" is a child who:

- Is a child of the claimant, or not being a child of the claimant, is a child in the custody of the claimant who is maintained by the claimant at the claimant's own expense for the whole or greater part (i.e. greater than 6 months) of the tax year, or for the whole or the greater part of the period from the date of birth of the child up until the end of the tax year, **and**
- Is born in the year of assessment, **or**

⁴ Taxes Consolidation Act 1997, Section 461

⁵ Taxes Consolidation Act 1997, Section 462B, inserted by Finance (No. 2) Act 2013

- Is under 18 years of age at the beginning of the tax year, **or**
- If over 18 years of age at the beginning of the tax year,
- Is in receipt of full-time education at a university, college, school or other educational establishment, **or**
- Is permanently incapacitated, either physically or mentally, from maintaining him/herself and had become so before reaching 21 years of age or has become incapacitated after reaching the age of 21 years but while in receipt of such full-time education.

Note: For the purpose of this tax credit, Revenue states that “maintaining” means an ability to support oneself by earning an income from working.

A “child” includes a child of the parent, a stepchild, a child whose parents are not married or in a civil partnership, a child who has been informally adopted, an adopted child and any child (who is not a child of the parent) of whom the parent has custody and maintains at his or her own expense. Revenue does not consider a “foster child” to be a qualifying child as the foster parents receive a maintenance allowance in respect of the foster child from the HSE.

References to full-time education include undergoing training by an employer under an apprenticeship for any trade or profession where the apprenticeship is for a minimum of 2 years duration.

The single person child carer tax credit is only available to one claimant in respect of a child, either the primary claimant or the secondary claimant, not by both claimants. If, on foot of a court order, the child is in the joint custody of both parents then the primary claimant is the person who receives Child Benefit from the DSP for that child.

The primary claimant may transfer this tax credit to the secondary claimant if the primary claimant is not in receipt of income or if he or she already has sufficient tax credits to cover his or her tax liability. If the tax credit is transferred then the increased SRCOP is automatically transferred also.

Example 2

Sue is aged 12 years. Her parents are divorced and Sue lives with her mother. She spends every second weekend from Saturday morning until Sunday evening, plus part of the school holidays with her father. In total Sue will spend 115 days with her father during this tax year. Sue's mother, the primary claimant, wishes to surrender the single person child carer tax credit to her ex-husband as she has insufficient income to utilise it. Sue's father qualifies as a secondary claimant because Sue spends at least 100 days in the tax year with him.

Once the tax credit is relinquished to the secondary claimant it remains with him or her until such time as the primary claimant withdraws the surrender of the credit. In such a situation the tax credit will be restored to the primary claimant at the start of the next tax year. For example, if the primary claimant withdraws the surrender of the tax credit in October 2023, it will not be restored to him or her until January 2024.

A primary claimant may claim, or surrender, the tax credit by completing and submitting a Form SPCC1 to Revenue. Once the primary claimant has relinquished the credit, the secondary claimant can apply for it using a Form SPCC2. These forms are available on the Revenue website at: <https://www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/children/single-person-child-carer-credit/how-do-you-claim-the-spcc.aspx>

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Example 3

An employee who is the primary carer of a child is entitled to claim the following tax credits:

Single person tax credit	€1,775
Single person child carer tax credit	€1,650
PAYE tax credit	<u>€1,775</u>
Total tax credits	€5,200

Widowed Person or Surviving Civil Partner Tax Credit (no qualifying child)⁶

A widowed person or surviving civil partner is treated as a single person for the purpose of the basic personal tax credit which he can claim. This applies to each subsequent year after the year of bereavement, as special rules apply to a widowed person or surviving civil partner in the tax year in which his spouse or civil partner dies. Thus a widowed person or surviving civil partner is entitled to claim the single/widowed person or surviving civil partner tax credit of €1,775 in the current tax year.

However, a widowed person or surviving civil partner is also entitled to claim additional tax credits. A widowed person or surviving civil partner with no qualifying child is entitled to claim an additional tax credit of €540 in the current tax year. This is in addition to the single/widowed person or surviving civil partner tax credit of €1,775. Many publications, including Revenue publications, show the widowed person or surviving civil partner tax credit as €2,315 being the sum of the single person tax credit of €1,775 and the widowed person or surviving civil partner (no qualifying child) tax credit of €540.

This tax credit cannot be claimed for the same tax year as the single person child carer tax credit.

Example 4

John Byrne, an employee, has been widowed for 10 years. He has no qualifying children and lives alone. What tax credits is John entitled to for the current tax year?

Solution 4

John is entitled to the PAYE tax credit of €1,775 as his salary is taxed under the PAYE system. He is also entitled to the single person tax credit of €1,775 and the widowed person (no qualifying child) tax credit of €540, giving a total of €4,090.

Widowed Person or Surviving Civil Partner (with a qualifying child) Tax Credit⁷

In any tax year, following the year of bereavement, in which a widowed person or surviving civil partner has a qualifying child (as previously defined for the purposes of the single person child carer tax credit) residing with them for all or part of the tax year, he is entitled to claim the single/widowed person or surviving civil partner tax credit plus the single person child carer tax credit to give the same tax credits as a married couple or civil partnership. In addition, assuming the individual has a qualifying child residing with him or her for all or part of each of the subsequent 5 years following the year of bereavement, is entitled to an additional tax credit, which reduces on a sliding scale over a period of 5 years, as follows:

- | | |
|---|--------|
| • First year after year of bereavement | €3,600 |
| • Second year after year of bereavement | €3,150 |

⁶ Taxes Consolidation Act 1997, Section 461A

⁷ Taxes Consolidation Act 1997, Section 463

• Third year after year of bereavement	€2,700
• Fourth year after year of bereavement	€2,250
• Fifth year after year of bereavement	€1,800

Example 5

Shane's wife died in September 2021. He has two children aged 8 and 10. What tax credits is Shane entitled to for the current tax year assuming he is an employee?

Solution 5

Shane is entitled to the PAYE tax credit of €1,775 as his employment income is taxed under the PAYE system. He is also entitled to the single person tax credit of €1,775 and the single person child carer tax credit of €1,650. As his wife died in 2021, he is also entitled to the additional second year after year of bereavement tax credit of €3,150.

PAYE tax credit	€1,775
Single / Widowed person tax credit	€1,775
Single person child carer tax credit	€1,650
Second year after year of bereavement	€3,150
Total tax credits	€8,350

Widowed Person/Surviving Civil Partner Year of Bereavement Tax Credit

The widowed person or surviving civil partner year of bereavement tax credit⁸ of €3,550 for the current year, applies to a widowed person or a surviving civil partner for the tax year in which his spouse or civil partner's death occurs, provided the spouse or civil partner who died was the "assessable spouse" or "nominated civil partner". This tax credit is available to the surviving spouse or civil partner against the tax liability arising in the post-death period, that is, in the period from the date of death to the end of the tax year.

This tax credit is not available to the surviving spouse or civil partner, if in the year of death the couple were assessed to income tax under the joint assessment basis and the surviving spouse or civil partner was the "assessable spouse" or "nominated civil partner".

There are special rules, which apply to the pre-death and post-death tax treatment of married couples or civil partners in the year in which one spouse or civil partner dies. These rules are outlined in the Chapter entitled "Personal Taxation".

Example 6

Pat and Sheila Ryan, a married couple, are jointly assessed for income tax purposes. Pat and Sheila were both employed. Pat, who was the assessable spouse, died during the current tax year. What tax credits is Sheila entitled to for the post death period?

Solution 6

Sheila is entitled to the widowed person year of bereavement tax credit of €3,550 and the PAYE tax credit of 20% of her income, subject to the maximum of €1,775. As previously stated, tax credits are granted to the extent that they reduce the tax liability to nil.

Where the assessable spouse or nominated civil partner is the surviving spouse or civil partner, he will continue to get the married couple or civil partnership tax credits and SRCOP for the

⁸ Taxes Consolidation Act 1997, Section 461

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entire tax year. He will be taxed on his own income for the full tax year in which his spouse or civil partner died plus his late spouse or civil partner's income from the beginning of the tax year to the date of death.

Incapacitated Child Tax Credit

An individual can claim the incapacitated child tax credit⁹ of €3,300 in respect of **each** incapacitated child who is living with the claimant at any time during the tax year. An incapacitated child is one who:

- Is under 18 years of age who is permanently incapacitated physically or mentally, or
- Is over 18 years of age at the beginning of the tax year and became permanently incapacitated physically or mentally from maintaining himself/herself before reaching the age of 21, or
- Became permanently incapacitated physically or mentally from maintaining himself/herself aged 21 years or over but while in receipt of full-time education or undergoing training by an employer under an apprenticeship for any trade or profession where the apprenticeship is for a minimum of 2 years duration.

Note: For this tax credit, Revenue states that “maintaining” means an ability to support oneself by earning an income from working. Factors which should be taken into account in deciding whether or not a child has a capacity to “maintain” himself or herself include:

- The severity of the mental or physical condition,
- The extent to which the child has the capacity for independent living,
- In the case of a child under the age of 18,
 - (i) The likelihood that the condition could, by the age of 18, be improved or ameliorated by any treatment, device, medication or therapy,
 - (ii) The extent to which the child, by the age of 18, would have the ability or potential to support himself or herself by earning an income from working,
 - (iii) the extent to which, by the age of 18, the child would have the capacity for independent living.

A doctor's certificate or medical report should be submitted with all initial claims outlining:

- The date the incapacity first arose.
- The degree and extent of the incapacity.
- In the case of a child under the age of 18 years whether the child may be regarded as permanently incapacitated by reason of mental or physical infirmity i.e. the infirmity is such that, if the child were over the age of 18 years, there would be a reasonable expectation that the child would be incapacitated from maintaining himself or herself, and
- In the case of a child over 18 years at the commencement of the year, whether the child is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself on an ongoing basis.

Where the individual is not the parent of the child, he must have custody of the child and maintain the child at his own expense.

Where two or more individuals jointly maintain an incapacitated child, the tax credit is apportioned between them, based on the maintenance costs incurred by each individual. The

⁹ Taxes Consolidation Act 1997, Section 465

incapacitated child tax credit cannot be claimed in addition to the dependent relative tax credit, for the same individual.

A Form ICC 2 (Incapacitated Child Tax Credit Claim Form 2) www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/documents/incapacitated-child-tax-credit-claim-form-2.pdf must be completed by the child's doctor or consultant. Where the credit is claimed online via MyAccount or on an income tax return for a previous year, the claimant should retain the completed Form ICC 2 for 6 years as part of his tax records. Where the claimant is not registered for MyAccount, a copy of the completed Form ICC 2 and the application Form ICC 1 should be submitted to the individual's tax office.

For children who are under 18, the Form ICC 2 should certify whether the child may be regarded as being permanently incapacitated from maintaining themselves i.e. both now and when they turn 18. For children who are over 18, the Form ICC 2 should certify that the child is permanently incapacitated from maintaining himself or herself.

If the incapacity can be corrected or relieved by the use of any treatment, device, medication or therapy to the point that there is a reasonable expectation that the child can earn a living from working, the credit will not be granted. For example, this tax credit would not be granted in respect of a child with a hearing impairment which can be corrected by a hearing aid.

As each situation will be different, individuals who wish to claim the tax credit should submit an application form with any relevant medical information and decisions will be made according to each individual set of circumstances.

Age Tax Credit

A person may claim the age tax credit¹⁰ where he is 65 years of age or over at any time in the tax year. The age tax credit for the current year is €245. With regard to a married couple or civil partnership, where the spouses or partners reside together and are jointly assessed for tax purposes, if one spouse or partner is 65 years of age or over at any time during the tax year, the age tax credit is doubled to €490 for the current year.

Dependent Relative Tax Credit

A dependent relative tax credit¹¹ of €245 may be claimed by a person, who maintains at his own expense a:

- Relative, including a relative of his spouse or civil partner, who is unable, due to old age or infirmity to maintain himself or herself, or
- A widowed parent or surviving civil partner of his or of his spouse or civil partner, regardless of the state of his or her health, or
- Son or daughter, or a child of his or her civil partner who resides with him or her and on whose services he or she is compelled to depend on due to old age or infirmity (e.g. the tax credit may be claimed by the parent, in the situation where the parent is being cared for by a child, and the child has no income to utilise the tax credit).

¹⁰ Taxes Consolidation Act 1997, Section 464

¹¹ Taxes Consolidation Act 1997, Section 466

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“Maintains at his or her own expense” means meeting the cost of everyday living. To qualify for the tax credit, the claimant must substantially maintain the relative in circumstances where the relative is unable to maintain themselves.

This tax credit is reduced to nil where the income of the relative exceeds €16,780 for 2023, which is equivalent to the maximum State Pension (Contributory) for an individual aged 80 or over claiming the living alone allowance and Island allowance plus a maximum of €280 per year.

The dependent relative tax credit cannot be claimed in addition to the incapacitated child tax credit for the same individual.

Blind Person Tax Credit

A person who is blind for the whole or any part of a tax year, (or where one spouse or civil partner is blind), may claim the blind person tax credit¹² of €1,650 for the current tax year. Where both spouses or civil partners are blind, the tax credit is doubled to €3,300.

There is also an additional allowance of €825 available to a blind person who is the registered owner of a trained guide dog. Tax relief is available on this allowance at the standard rate of tax (i.e. as an increase to the individual’s tax credits). The maximum amount of relief available is €165 ($\text{€}825 \times 20\%$). As tax relief is only available at the standard rate of tax, the individual’s SRCOP is not increased.

Home Carer Tax Credit

The home carer tax credit¹³ of €1,700 may be claimed for the current tax year by a married couple or civil partnership, who are jointly assessed for income tax purposes, where one spouse or civil partner stays at home to take care of a dependent person. A dependent person is a person (other than the spouse or civil partner of the claimant) who normally resides with the claimant and is:

- A child for whom Child Benefit is payable,
- A person aged 65 or over, or
- A person who is permanently incapacitated, due to physical or mental infirmity.

A dependent person must normally reside with the claimant, however if the dependent person is a relative (including a relation by marriage) of the claimant, the tax credit can be claimed where the dependent person lives on the same property, next door, or within 2 kilometres of the claimant and there is a direct communication link (e.g. telephone or alarm system) between each residence.

Only one home carer tax credit may be claimed irrespective of the number of persons being cared for. A married couple or civil partnership is entitled to the full home carer tax credit where the carer’s income (excluding any DSP Carer’s Benefit or Allowance) does not exceed €7,200 in the current tax year. Where the carer’s income exceeds €7,200, this tax credit is restricted by 50% of the excess amount.

Example 7

If the income of a carer (i.e. the spouse or civil partner who remains at home to care for a dependent person) is €7,800, the home carer tax credit is calculated as follows:

¹² Taxes Consolidation Act 1997, Section 468

¹³ Taxes Consolidation Act 1997, Section 466A

<i>Home carer's income</i>		<i>€7,800.00</i>
<i>Reduced by</i>		<i><u>€7,200.00</u></i>
<i>Excess</i>		<i>€600.00</i>
<i>Restriction of 50% of excess:</i>	<i>€600 x 50% =</i>	<i>€300.00</i>
<i>Home carer tax credit</i>		<i>€1,700.00</i>
<i>Less: home carer income restriction</i>		<i><u>€300.00</u></i>
<i>Restricted home carer's tax credit</i>		<i>€1,400.00</i>

The full home carer tax credit would not be lost unless the income of the carer exceeded €10,400 in the current tax year (i.e. €10,600 - €7,200 = €3,400 x 50% = €1,700, hence reducing the home carer credit to zero).

As an exception to this rule, if a person claimed the Home Carer tax credit in one year, and their income exceeds the income limit of €7,200 in the second year, they can still claim the credit for that second year provided the other qualifying conditions are met. The amount of the tax credit will be restricted to the amount granted in the previous year.

Example 8

Sheila and John are married and jointly assessed for tax purposes. Sheila is the primary carer of their young children. Sheila was not employed in 2022 and the couple claimed the Home Carer tax credit of €1,600 in 2022. Sheila commenced a part-time employment in 2023 and will earn €12,000.

Although Sheila's income exceeds the income limit of €7,200 for 2023, the couple would still be entitled to claim the Home Carer tax credit in 2023 if the other qualifying criteria are met. However, the Home Carer tax credit would be restricted to €1,600 which was the entitlement for 2022. If Sheila continued to earn €12,000 in 2024, they would not be entitled to claim the Home Carer tax credit in 2024.

A married couple or civil partnership with one income is entitled to a SRCOP of €49,000. Where both spouses or civil partners have income, the SRCOP can be increased by the amount of the lower income, subject to a maximum of €31,000. However, where the Home Carer tax credit is claimed, the couple will not be entitled to an increase in the SRCOP.

A married couple or civil partnership entitled to claim the Home Carer tax credit should therefore compare their joint tax liability arising, if no Home Carer tax credit is claimed and they claim the increased SRCOP based on the lower income, against their joint income tax liability arising, where the Home Carer tax credit is claimed and the SRCOP remains at €49,000.

It is possible to claim both the home carer tax credit and the dependent relative tax credit, or the Home Carer tax credit and the incapacitated child tax credit in respect of the same individual, assuming the appropriate qualifying conditions are satisfied.

Note: Where an individual is on a short term assignment in Ireland and remains on their home country social security system for the duration of their assignment, he is not entitled to claim child benefit. If the claimant is in receipt of a similar type of payment in their home country, Revenue will grant this tax credit if the other conditions are satisfied (e.g. the child must reside with the qualifying claimant).

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Fisher Tax Credit

A tax credit of €1,270 is available to both employees and self-employed individuals fishing at sea for wild fish or shellfish on a registered fishing vessel. To qualify for this tax credit, the person must be fishing at sea for at least 8 hours per day and at least 80 days per tax year.

This tax credit is not available in respect of salmon fishing or freshwater eel fishing. Nor can it be claimed by fish farmers or individuals fishing or dredging for scientific, research or training purposes.

An individual cannot claim the fisher tax credit and the Seafarer Allowance of €6,350 in the same year. The Seafarer Allowance is outlined in the chapter entitled “Residence in Ireland for Income Tax Purposes”.

Sea-Going Naval Personnel Credit

A tax credit of €1,500 is available to permanent members of the Irish Naval Service who spend at least 80 days at sea in the preceding tax year performing the duties of their employment. The individual will be required to spend a cumulative period of 8 hours within any 24-hour period on patrol at sea on board a naval vessel.

An individual who qualifies for this tax credit cannot claim the Seafarer Allowance or the Fisher tax credit in respect of the same year. This tax credit is due to expire on 31st December 2023.

Tax Relief for Third Level Tuition Fees

Tax relief is available at the standard rate of tax for qualifying third level tuition fees¹⁴ paid by or on behalf of students (not necessarily paid by a relative) who attend an approved course of study, which must last for a minimum of 2 years. A list of approved courses is available on the Revenue website: www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/education/tuition-fees-paid-for-third-level-education/approved-colleges-and-courses.aspx

Most undergraduate students attending publicly funded third-level courses do not have to pay tuition fees. The Department of Education pays the fees to the colleges instead. However, most third level institutions charge an annual “Student Contribution” to cover the cost of student services and examinations. The student contribution is regarded as a qualifying tuition fee for tax relief purposes. The student contribution may vary between institutions but the maximum student contribution for the academic year 2022/2023 is €2,000 (reduced from €3,000 in Budget 2023) in respect of a full-time course. Where a student qualifies for a student grant, the grant may cover all or part of the student contribution.

Tuition fees are generally payable where a student fails a year and must re-sit that year or where a student pursues a course offered by other educational institutions at a cost per academic year. In addition, tuition fees are generally payable in respect of postgraduate courses.

Qualifying fees include tuition fees and the student contribution, but excludes registration, administration or examination fees and the cost of books. Relief is not available for any part of the fees which are reimbursed to the individual from any source i.e. scholarship, grant, employer, etc. Where a claim for tax relief is submitted to Revenue, relief at the standard rate of tax will be granted to the claimant on qualifying third level tuition fees, however the following amount of any claim will be disregarded:

¹⁴ Taxes Consolidation Act 1997, Section 473A

Years	Full-Time (Where any one of the students of whom relief is claimed is a full-time student)	Part-Time (Where all the students in respect of whom relief is claimed are part-time students)
2019 to 2023	€3,000	€1,500

The maximum limit on qualifying tuition fees is €7,000 per individual. This limit applies per course per academic year.

Where fees are paid in instalments, tax relief may be claimed either:

- In the tax year the course commenced, or
- In the year the instalments were made.

Tax relief can be claimed online via myAccount in respect of fees paid in the current tax year or by completing an income tax return in respect of a previous tax year. A paper based application Form IT31 is also available to download from the Revenue website:

<https://www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/documents/education/form-it31.pdf>

Example 9

Tom paid a student contribution fee of €2,000 to a college for an approved course in respect of his son in September 2022. What tax relief is Tom entitled to claim in respect of this payment?

Solution 9

The student contribution fee qualifies for tax relief, however, the first €3,000 of his claim is disregarded. Hence no tax relief is due.

Example 10

Seamus paid a student contribution of €4,000 to a college for an approved full time course in respect of his two children in September 2022. What tax relief is Seamus entitled to claim in respect of this payment?

Solution 10

Seamus is entitled to claim tax relief on this payment; however the first €3,000 of his claim is disregarded. Tax relief at the standard rate is available in respect of the additional €1,000 resulting in a tax refund of €200 (€1,000 @ 20%), assuming Seamus paid tax of at least €200.

Example 11

Kevin paid tuition fees of €10,000 in September 2022 in respect of a qualifying postgraduate full-time course. What tax relief is Kevin entitled to claim?

Solution 11

The maximum limit on qualifying tuition fees is €7,000; hence the additional €3,000 paid by Kevin does not qualify for tax relief. In addition, the first €3,000 of his claim is disregarded. Tax relief is only available in respect of a maximum €4,000 (€7,000 - €3,000). This will result in a tax refund of €800 (€4,000 @ 20%); assuming Kevin paid tax of at least €800.

Tax relief is not available on any part of the fees which are refunded by the college (e.g. where a student enrolls for a course and subsequently withdraws from the course and receives a full or partial refund of the fees). If tax relief has been claimed on tuition fees and the individual

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subsequently receives a total or partial refund from the college, the individual must notify Revenue within 21 days of receipt of the refund. Failure to do so could result in a penalty of €3,000.

Certain Foreign Language or Information Technology courses may qualify for tax relief.¹⁵ Foreign language does not include Irish or English. In order to qualify, the course must be SOLAS approved, be of less than 2 years duration and result in an award of a Certificate of Competence. Tax relief at the standard rate of tax is available for these courses where the course fees for an approved course are greater than €315 but do not exceed €1,270.

Employed person taking care of Incapacitated Individual¹⁶

Where an individual, or his spouse or civil partner, employs another person to care for a family member or a relative, including a relative of his spouse or civil partner, who is totally incapacitated by physical or mental infirmity, that person can claim an allowance of the amount of expenses actually incurred in employing such a person subject to a maximum of €75,000 for the current tax year. Any amount recoverable from the HSE, or any other source, in respect of the cost of employing a carer does not qualify for tax relief.

In order to claim this allowance, where the carer is employed directly by the claimant, the claimant must register as an employer and operate tax, PRSI and USC on the payments made to the carer. If the carer is employed via an agency (e.g. charitable or voluntary organisation such as the Alzheimer Society of Ireland or other commercial business providing home care services), there is no need for the claimant to register as an employer.

The tax relief at the individual's marginal rate (20% or 40% as appropriate) is granted by Revenue by reducing the individual's taxable income by the amount of the expense incurred, subject to a maximum reduction of €75,000. For example, if an individual incurred a cost (including employer PRSI if applicable) of €35,000 employing a carer, his income for tax purposes will be reduced by €35,000. If the individual is a 40% taxpayer, this could result in a tax refund of €14,000.

Where two or more individuals engage a person to look after a relative the tax relief can be apportioned between them. If the claimant is a PAYE taxpayer, tax relief can be claimed during the tax year in which case Revenue will increase the individual's SRCOP and tax credits to reflect the tax relief due.

If this relief is claimed in respect of the costs incurred in employing a person to care for an incapacitated individual, the claimant is not also entitled to the incapacitated child tax credit or the dependent relative tax credit in respect of the employed person (i.e. the individual employed as a carer cannot be the same person in respect of whom the claimant receives the incapacitated child tax credit or dependent relative tax credit).

Rent a Room Relief¹⁷

Where a person rents a room or rooms in his principle private residence, the total income received is exempt from income tax, PRSI and USC provided it does not exceed €14,000 for the current year. Where the total income exceeds this exemption limit, the full amount is liable to income tax, USC and PRSI.

¹⁵ Taxes Consolidation Act 1997, Section 476

¹⁶ Taxes Consolidation Act 1997, Section 467

¹⁷ Taxes Consolidation Act 1997, Section 216A

This exemption does not apply to rent received from a child of the individual or of the individual's civil partner. There is no restriction where rent is paid by other family members (e.g. a niece or nephew). If more than one person is entitled to relief (i.e. a husband and wife), the limit is divided equally between them.

The room(s) must be rented for the purposes of residential accommodation where the occupant is using the room on its own or with other parts of the residence as a home. Revenue have previously stated that they believe income derived from the provision of accommodation to occasional visitors for short periods, including, where the accommodation is provided through online accommodation booking sites, does not qualify for rent a room relief as the visitors use the accommodation as guest accommodation rather than for residential purposes, and as such is taxable.

Since 2019, Rent a Room Relief is not granted in respect of a person who rents a room in a qualifying residence who uses the room for a period which does not exceed 28 consecutive days.

However, this 28 day restriction will not apply where a room is rented to a person who:

- Is resident or ordinarily resident in the State and incapacitated physically or mentally,
- Uses the room for a minimum of 4 consecutive days per week for at least 4 consecutive weeks, or
- Is receiving part-time or full-time education in the state.

In relation to the above, Revenue may seek proof from the person claiming the relief to support the claim.

This relief does not apply to payments received by an employee from his employer. This is an anti-avoidance measure to ensure that an employee cannot claim relief on rent received from his employer in return for the employee renting a room to an individual who is visiting his employer on business.

Rent Tax Credit¹⁸

Finance Act 2022 introduced a new Rent tax credit for renters in the private sector who are not in receipt of any other State housing supports. The tax credit will be available for tax years 2022 to 2025 inclusive. The credit will be calculated as the lesser of 20% of the amount of rent paid or €500 for a single person (or €1,000 for a jointly assessed married couple). This limit applies regardless of how many family members the taxpayer is paying rent for.

The credit will be available in respect of rental payments:

- For an individual's principal private residence,
- Another property used by the individual to facilitate attendance at work or an approved third level course, or
- A property used by the taxpayer's qualifying child attending an approved third level course,

subject to satisfying the required conditions.

Some of the conditions include:

- The rental property must be located in the State.

¹⁸ Taxes Consolidation Act 1997, Section 473B

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- A rent tax credit cannot be claimed in respect of rent paid to a relative except where the tenancy is registered with the Residential Tenancies Board (RTB) and the relationship is other than that of a parent and child.
- Where rent is paid on behalf of a qualifying child (under 23 years of age at the beginning of the tax year) attending college, neither the individual or the child can be a relative of the landlord, and the tenancy must be registered with the RTB.

The relief will be given on foot a claim being made to Revenue by the individual. For 2022, this credit can be claimed on the taxpayer's income tax return. In 2023, it should be possible to have the tax credit allocated on the individual's Tax Credit Certificate. Taxpayers will be required to provide Revenue with the landlords details and details of the property and rental payments in order to claim this credit.

Medical Insurance Relief¹⁹

Tax relief may be claimed in respect of medical insurance premiums, or the amount of a dental insurance premium which relates to non-routine dental treatment, paid by individuals in respect of themselves, their spouse or civil partner, children and dependents. Tax relief for medical insurance contributions is granted at source i.e. tax relief at source (TRS) by the insurance provider, which means that rather than claiming tax relief from Revenue, once an individual supplies the medical insurance provider with the necessary information, the appropriate tax relief is calculated by the insurance provider and the insurance premium is then reduced by the amount of the tax relief due.

This means that the individual is given the full value of the tax relief regardless of whether his level of income is sufficient to make him liable to income tax.

Medical insurance premiums qualify for tax relief at the standard rate of income tax but tax relief is limited to the first €1,000 per adult premium and the first €500 per child premium payable under a relevant contract.²⁰ Any premium payable in excess of these limits does not qualify for tax relief.

Example 12

John obtained a quote of €1,200 for medical insurance for the current tax year. The following calculation shows how much his medical insurance premium is reduced by tax relief at source.

<i>Medical insurance gross premium</i>	<i>€1,200.00</i>
<i>Tax relief at source: max of €1,000 x 20%</i>	<i>€200.00</i>
<i>Net premium payable</i>	<i>€1,000.00</i>

Note: The cost of health insurance policies is generally advertised net of tax relief at source.

Remote Working Relief

Since 1st January 2022, **Finance Act 2021** introduced statutory tax relief for electricity, heating and broadband expenses incurred by employees who are working from home. Prior to 2022, tax relief on these expenses was provided on a concessionary basis by Revenue.

Tax relief is available to a remote worker, which is an employee or office holder who:

¹⁹ Taxes Consolidation Act 1997, Section 470

²⁰ Finance (No. 2) Act 2013, Section 8

- Works from home on a full-time or part-time basis, or
- Works some of his normal working time at home with the remainder of his normal working time being spent at his normal place of work or in some other place.

The relief is not available to an employee who chooses to bring work home in the evening or weekends outside his normal working hours.

Since 1st January 2022:

- An employee can claim tax relief from Revenue in respect of 30% of the annual electricity, heat and broadband expenses, apportioned based on the number of days worked from home during the year,
- Less any amount reimbursed or to be reimbursed, directly or indirectly, to the employee by the employer in respect of those expenses.

Prior to 2022, tax relief was available in respect of:

- 10% of the annual electricity and heat expenses apportioned based on the number of days worked from home during the year.
- 30% of the annual broadband costs apportioned based on the number of days worked from home during the year. This concession for broadband only applied during the Covid-19 pandemic,
- Less any amount reimbursed or to be reimbursed to the employee by the employer in respect of those expenses.

If an expense is shared between 2 or more people (e.g. people living in shared accommodation), the cost should be apportioned based on the amount paid by each individual. This does not apply in the case of married couples/civil partners who are jointly assessed for tax purposes.

Supporting documents such as receipts or proof of payment should be retained by the employee for a period of 6 years from the end of the tax year to which they relate. Alternatively, such documents may be uploaded to Revenue storage using the Receipts Tracker in myAccount which eliminates the requirement for receipts to be retained by the taxpayer.

Revenue may request confirmation from the employer confirming the number of days the employee worked from home.

Tax relief should not be claimed for any days where the employee is not working from home, such as:

- Weekends,
- Annual leave,
- Public holidays,
- Protective leave such as maternity, paternity, parental, force majeure leave, etc.
- Sick leave, etc.

Tax relief on remote working expenses can be claimed:

- At the end of the tax year by completing an end of year Income Tax return, or
- During the tax year on a real-time basis by uploading copies of receipts to the Revenue Receipts Tracker.

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As an alternative to the employee claiming tax relief from Revenue on such expenses, employers are permitted to pay a remote worker a tax-free payment of up to €3.20 per working day. If the employer was to pay the €3.20 per working day, this would most likely exceed any tax relief available to the employee as illustrated in the following example.

When claiming tax relief from Remote Working Relief from Revenue, employees will have to state the amount of any tax-free remote working payments received from their employer.

Example 13

Sarah worked from home for 230 days in 2023. She incurred €2,000 on heat and light bills and a further €600 on broadband during 2023. Sarah's employer has not made any payments to her in respect of these expenses.

- How much tax relief can Sarah claim on the above expenses for 2023?*
- Calculate how much Sarah's employer could pay her tax free for each year as an alternative to Sarah claiming tax relief from Revenue.*

Solution 13

- Tax relief is available at Sarah's marginal rate in respect of the apportioned costs incurred based on the number of days she is working from home in 2023 as follows:*

Electricity and Heat	Broadband
$\text{€2,000} \times 230 / 365 = \text{€1,260.28}$	$\text{€600} \times 230 / 365 = \text{€378.08}$
<i>Restrict to 30%</i>	<i>Restrict to 30%</i>
$\text{€1,260.28} \times 30\% = \text{€378.09}$	$\text{€378.08} \times 30\% = \text{€113.43}$
Total claim:	$\text{€378.09} + \text{€113.43} = \text{€491.52}$
<i>Assuming Sarah is a 40% taxpayer, she will be entitled to tax relief of €196.61 (€491.52 x 40%).</i>	

- If Sarah's employer was to pay her the tax free payment of €3.20 per day, this would amount to €736 for the year ($\text{€3.20} \times 230$ days) which would reduce the above claim to zero.*

3. Health Expenses

Tax relief can be claimed on health expenses incurred by an individual on the provision of health care.²¹

“Health care” means prevention, diagnosis, alleviation or treatment of an ailment, injury, infirmity, defect or disability, and includes care received by a woman in respect of pregnancy, but does not include:

- Routine ophthalmic treatment (e.g. sight testing, advice on the use of, provision or repair of, glasses or contact lenses).
- Routine dental treatment (e.g. extraction, scaling and filling of teeth; or provision and repair of artificial teeth or dentures), or
- Cosmetic surgery or similar procedures, unless the surgery or procedure is to correct or improve a physical deformity arising from, or directly related to, a congenital abnormality, a personal injury or a disfiguring disease.

²¹ Taxes Consolidation Act 1997, Section 469

Tax relief is only granted in respect of costs actually incurred and therefore, any costs, which are covered by medical insurance, compensation or otherwise, or paid for by the employer, do not qualify for tax relief.

Tax relief is available for health expenses incurred such as:

- Doctors' and consultants' fees,
- Diagnostic procedures carried out on the advice of a practitioner,
- Drugs or medicines prescribed by a doctor, dentist, or consultant,
- Maintenance or treatment in a hospital in connection with the services of a practitioner,
- Supply, maintenance or repair of any medical, surgical, dental or nursing appliance used on the advice of a practitioner (e.g. hearing aid, orthopaedic bed or chair, wheelchair, stair lift, exercise bicycle, computer, etc.) Where there is any doubt that the appliance is a “medical, surgical, dental or nursing appliance used on the advice of a practitioner”, a medical certificate should be requested from the medical practitioner which should outline the nature of the illness, confirm that the device is being used on the advice of the medical practitioner and outline how it will help prevent, diagnose, alleviate or treat the illness, injury or disability from which the individual is suffering.
- Physiotherapy or similar treatment prescribed by a practitioner,
- Orthoptic (eye care) or similar treatment prescribed by a practitioner,
- Speech and language therapy carried out by a speech and language therapist,
- Educational psychological assessments for a person under 18 year of age or if over 18 the individual must be receiving full-time instruction at any university, college, school or other educational establishment,
- Transport by ambulance,
- Certain items of expenditure in respect of a child suffering from a serious life-threatening illness,
- Kidney patients' expenses (up to a maximum amount depending on whether the patient uses hospital dialysis, home dialysis or where the patient has treatment at home without the use of a dialysis machine),
- Specialised (non-routine e.g. root canal treatment, extraction of impacted wisdom tooth) dental treatment,
- 'In vitro' fertilization
- Guide Dogs for blind persons or Assistance Dogs for certain patients (a sum of €825 may be claimed as a health expense).

An individual is entitled to claim tax relief at the standard rate in respect of health expenses which he incurs for himself or in respect of any other individual. An exception to this rule is that any health expenses incurred for maintenance or treatment in a nursing home, which provides for 24 hour nursing care on-site, qualify for tax relief at the individual's marginal rate of tax i.e. 20% or 40% as applicable.

Further information is available on the Revenue website at <https://www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/health-and-age/health-expenses/index.aspx>, which contains a comprehensive guide to what health expenses qualify for tax relief. Tax relief can be claimed online by completing an income tax return which is available via myAccount. If the claim includes dental expenses, a Form Med 2 must be certified by the dental practitioner and retained by the individual. Tax relief can be claimed following the end of the tax year by completing an income tax return.

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Tax relief on health expenses may be claimed on a real-time basis during the tax year, in which case Revenue will increase the employee's SRCOP and tax credits accordingly. A Receipts Tracker is available in myAccount which allows employees to upload a photograph or PDF of original receipts. Once the receipt is clear and legible it will be accepted by Revenue and the employee will not have to keep the originals. Where an employee wishes to claim tax relief on a real time basis during the year he is obliged to use the Receipts Tracker to upload a copy of the receipt and he will not be able to make a claim without doing so. If tax relief is claimed at year by completing a tax return, the employee is not compelled to use the Receipts Tracker but may do so to negate the requirement to keep paper records. If he does not use the Receipts Tracker, he is obliged to retain records of these receipts for 6 complete tax years.

Example 14

Liam Scanlon has incurred the following qualifying health expenses during the current tax year for various members of his family as follows:

<i>Liam</i>	<i>€2,200</i>
<i>Spouse</i>	<i>€200</i>
<i>Son</i>	<i>€150</i>
<i>Daughter</i>	<i>€50</i>
<i>Total</i>	<i>€2,600</i>

€2,600 qualifies for tax relief at the standard rate of tax. Liam is due a refund of €520 (€2,600 @ 20%) provided he has paid this amount of tax in the current tax year.

4. Tax Relief for Expenses incurred in Employment

In addition to the personal tax credits listed above, many employees are also entitled to additional tax relief in respect of expenses, which are wholly, exclusively and necessarily incurred by them in the performance of their duties of employment.²² These are called Flat Rate expenses or Schedule E expenses. Tax relief for an expense is granted through the PAYE system, by increasing the individual's SRCOP by an amount equal to the annual expense allowance and by granting an additional tax credit equal to the amount of the expense allowance multiplied by the standard rate of tax.

For example, a carpenter who has to provide his own tools and protective clothing for his job is entitled to claim tax relief on the costs incurred. Rather than thousands of individual claims being submitted every year for individual cases, Revenue often agree a standard amount for various occupations.

An employee can claim this additional tax relief online via PAYE Services in myAccount or by contacting the National Employee Helpline. The relief will be given for the current year, and subsequent years if applicable, by way of an adjustment on his Tax Credit Certificate which will also be reflected in the RPN issued to the employer.

Claims for previous years can be made by completing an income tax return which is available in myAccount. Refunds are restricted to the previous 4 tax years.

²² Taxes Consolidation Act 1997, Section 114

If an employee considers that the standard annual expense allowance granted by Revenue for his occupation is insufficient for his personal circumstances, he may make a separate claim for an increased expense allowance directly to his local tax office.

Example 15

Jean Smyth is a nurse and is entitled to an annual expense allowance of €733 for supplying and laundering her own uniforms. Jean is single and she earns €30,000 in the current tax year. What tax credits and SRCOP is Jean entitled to?

Solution 15

Single Person tax credit	€1,775.00
PAYE tax credit	€1,775.00
Flat rate expenses tax credit ($\text{€}733 \times 20\%$) =	<u>€146.60</u>
Total tax credits for year	€3,696.60
Annual SRCOP ($\text{€}40,000 + \text{€}733$) =	€40,733.00

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Flat Rate Expenses for certain categories of Employment					
Category	Sub-category	2023	2022	2021	2020
Agricultural Advisers (employed by Teagasc)		671	671	671	671
Archaeologists: (Civil Service)		127	127	127	127
Architects employed by	Civil Service	127	127	127	127
Architects employed by	Local Authorities	127	127	127	127
Airline Cabin Crews		64	64	64	64
Bar trade Employees		93	93	93	93
Building Industry	Bricklayer	175	175	175	175
Building Industry	Fitter mechanic, plasterer	103	103	103	103
Building Industry	Electrician	153	153	153	153
Building Industry	Mason, roofer slater, tiler, floor layer, stone cutter	120	120	120	120
Building Industry	Driver, scaffolder, sheeter, steel erector	52	52	52	52
Building Industry	Professionals: engineers, surveyors, etc.	33	33	33	33
Building Industry	General operatives (labourers etc. incl. Public Sector)	97	97	97	97
Bus, rail and road operatives in Bus Átha Cliath, Bus Éireann and		160	160	160	160
Cardiac Technicians	Female	212	212	212	212
Cardiac Technicians	Male	107	107	107	107
Carpentry and joinery trades	Cabinet makers, Carpenters, Joiners	220	220	220	220
Carpentry and joinery trades	Painters, Polishers, Upholsterers, Wood Cutting Machinists	140	140	140	140
Civil Service	Architectural Technologists & Assistants	166	166	166	166
Civil Service	Clerks of Works (incl. Senior and District Inspectors)	142	142	142	142
Civil Service	Engineering Technicians for Archaeologists, Architects, Engineers and Surveyors	166	166	166	166
Civil Service	Park Rangers and constables employed by the Office of Public Works	77	77	77	77
Clergymen (Church of Ireland)		127	127	127	127
Consultants (hospital) (Deduction includes subscription to the Irish Medical Council)		695	695	695	695
Cosmetologists - Obliged to supply and launder their own white		160	160	160	160
Defence Forces Personnel (All enlisted personnel not in receipt of		150	150	150	150
Dentists in employment		376	376	376	376
Dietitians who pay the statutory registration fee to CORU		100	100	100	100
Dockers		73	73	73	73
Doctors (hospital, including consultants)		695	695	695	695
Draughtsmen (Local Authority)		133	133	133	133
Driving Instructors		125	125	125	125
Engineer employed by	Civil Service	166	166	166	166
Engineer employed by	Local Authorities	127	127	127	127
Engineer employed by	Eircom, Coillte, OPW	166	166	166	166
Engineering Industry [and Electrical Industry from 1997/98]	Skilled workers who bear the full cost of own tools and overalls	331	331	331	331

Personal Tax Credits and Reliefs

Flat Rate Expenses for certain categories of Employment					
Category	Sub-category	2023	2022	2021	2020
Engineering Industry [and Electrical Industry from 1997/98]	Semi-skilled workers who bear the full cost of own tools and overalls	254	254	254	254
Engineering Industry [and Electrical Industry from 1997/98]	All unskilled workers and skilled or semi-skilled workers who do not bear the full cost of own tools and overalls	219	219	219	219
Firefighters	Full-time	272	272	272	272
Firefighters	Part-time	407	407	407	407
Fishermen in Employment		318	318	318	318
Foresters employed by Coillte		166	166	166	166
Freelance actors chargeable to PAYE		750	750	750	750
Grooms (Racehorse Training)		294	294	294	294
Home Helps (Employed directly or indirectly by Health Boards)		256	256	256	256
Hospitals Domestic Staff	Who are responsible for providing and laundering own uniforms (To include general operatives, porters, drivers, drivers, attendants, domestics, laundry operatives, cooks, catering supervisors, waitresses, catering staff, kitchen porters)	353	353	353	353
Hospitals Domestic Staff	Who are obliged to launder the uniforms supplied (To include general operatives, porters, drivers, drivers, attendants, domestics, laundry operatives, cooks, catering supervisors, waitresses, catering staff, kitchen porters)	185	185	185	185
Hospitals Domestic Staff	Whose uniforms are supplied and laundered free (To include general operatives, porters, drivers, drivers, attendants, domestics, laundry operatives, cooks, catering supervisors, waitresses, catering staff, kitchen porters)	93	93	93	93
Hotel industry	Head hall porter	90	90	90	90
Hotel industry	Hall porter	64	64	64	64
Hotel industry	Head waiter	127	127	127	127
Hotel industry	Waiter	80	80	80	80
Hotel industry	Waitress	80	80	80	80
Hotel industry	Chef	97	97	97	97
Hotel industry	Manager	191	191	191	191
Hotel industry	Assistant Manager	127	127	127	127
Hotel industry	Trainee Manager	78	78	78	78
Hotel industry	Kitchen Porter	21	21	21	21
Journalists	Journalists, including those in public relations area of Journalism	381	381	381	381
Journalists	Journalists who receive expense allowances from their employers	153	153	153	153
Local Authorities	Executive Chemists	115	115	115	115
Local Authorities	Parks Superintendents	40	40	40	40

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Flat Rate Expenses for certain categories of Employment						
Category	Sub-category	2023	2022	2021	2020	2019
Local Authorities	Town Planners	115	115	115	115	115
Medical Scientists who pay the statutory registration fee to CORU		100	100	100	100	100
Mining Industry	Miners/shift bosses underground, mill process workers/shift bosses and steam cleaners	1312	1312	1312	1312	1312
Mining Industry	Surface workers	655	655	655	655	655
Motor repair and motor assembly trades	Assembly workers, greasers, storemen and general workers who bear the full cost of own tools and overalls	52	52	52	52	52
Motor repair and motor assembly trades	Assembly workers, greasers, storemen and general workers who do not bear the full cost of own tools and overalls	42	42	42	42	42
Motor repair and motor assembly trades	Fitters and mechanics who bear the full cost of own tools and overalls	85	85	85	85	85
Motor repair and motor assembly trades	Fitters and mechanics) who do not bear the full cost of own tools and overalls	42	42	42	42	42
Nurses	where obliged to supply and launder their own uniforms	733	733	733	733	733
Nurses	where obliged to supply their own uniforms but laundered free	638	638	638	638	638
Nurses	where obliged to launder the uniforms supplied	353	353	353	353	353
Nurses	where uniforms are supplied and laundered by hospital	258	258	258	258	258
Nurses	Short Term Contracts through an Agency	80	80	80	80	80
Nursing Assistants (including attendants, orderlies and nurses' aides)	where obliged to supply and launder their own uniforms	526	526	526	526	526
Nursing Assistants (including attendants, orderlies and nurses' aides)	where obliged to supply their own uniforms but laundered free	440	440	440	440	440
Nursing Assistants (including attendants, orderlies and nurses' aides)	where obliged to launder the uniforms supplied	234	234	234	234	234
Nursing Assistants (including attendants, orderlies and nurses' aides)	where uniforms are supplied and laundered by hospital	93	93	93	93	93
Occupational Therapists	where obliged to supply and launder their own uniforms (includes CORU)	217	217	217	217	217
Occupational Therapists	where obliged to supply their own uniforms but laundered free (includes CORU)	153	153	153	153	153
Occupational Therapists	where uniforms are supplied and laundered by hospital (includes CORU)	52	52	52	52	52

Personal Tax Credits and Reliefs

Flat Rate Expenses for certain categories of Employment						
Category	Sub-category	2023	2022	2021	2020	2019
Optometrists in employment (includes CORU)	Registration Fee - once off fee paid initially in year 1	250	250	250	250	250
Optometrists in employment (includes CORU)	Retention Fee - payable in 1st year and each subsequent year	285	285	285	285	285
Optometrists in employment (includes CORU)	Restoration Fee - payable to re-register with the Opticians Board	279	279	279	279	279
Dispensing Opticians in employment (includes CORU)	Registration Fee - once off fee paid initially in year 1	200	200	200	200	200
Dispensing Opticians in employment (includes CORU)	Retention Fee - payable in 1st year and each subsequent year	225	225	225	225	225
Dispensing Opticians in employment (includes CORU)	Restoration Fee - payable to re-register with the Opticians Board	215	215	215	215	215
Panel Beaters / Sheet metal Workers	who bear full cost of own tools and overalls	78	78	78	78	78
Panel Beaters / Sheet metal Workers	who do not bear full cost of own tools and overalls	40	40	40	40	40
Pharmacists		400	400	400	400	400
Pharmaceutical Assistants		200	200	200	200	200
Phlebotomists	where obliged to supply and launder their own uniforms	270	270	270	270	220
Phlebotomists	where obliged to supply but do not launder their own uniforms	220	220	220	220	220
Phlebotomists	where obliged to launder the uniforms supplied	50	50	50	50	
Physiotherapists	where obliged to supply and launder their own uniforms	381	381	381	381	381
Physiotherapists	where obliged to supply their own uniforms but laundered free	318	318	318	318	318
Physiotherapists	where uniforms are supplied and laundered by hospital	64	64	64	64	64
Pilots (Airline Pilots Association)		275	275	275	275	275
Plumbing trades	Plumber (non-welder)	177	177	177	177	177
Plumbing trades	Plumber-welder	205	205	205	205	205
Plumbing trades	Pipe fitter-welder	205	205	205	205	205
Printing Bookbinding and allied trades	Bookbinders (Hand)	109	109	109	109	109
Printing Bookbinding and allied trades	Bookbinders (Others)	97	97	97	97	97
Printing Bookbinding and allied trades	Compositors, linotype and monotype operators	121	121	121	121	121
Printing Bookbinding and allied trades	Copy Holders, photo lithographers, photo engravers and workers in T and E section of newspapers	114	114	114	114	114
Printing Bookbinding and allied trades	Monotype caster attendants, stereotypes and machine minders	135	135	135	135	135
Printing Bookbinding and allied trades	Readers and revisers	100	100	100	100	100

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Flat Rate Expenses for certain categories of Employment						
Category	Sub-category	2023	2022	2021	2020	2019
Printing Bookbinding and allied trades	Rotary machine minders and assistants	150	150	150	150	150
Printing Bookbinding and allied trades	Others (e.g. cutters, dispatchers, rulers, warehousemen)	90	90	90	90	90
Professional Valuers in the Valuation Office		680	680	680	680	680
Radiographers & Radiation Therapists	where obliged to supply and launder their own white uniforms	242	242	242	242	242
Radiographers & Radiation Therapists	where obliged to supply their own white uniforms but laundered free	143	143	143	143	143
Radiographers & Radiation Therapists	where white uniforms are supplied and laundered by hospital	73	73	73	73	73
Respiratory & Pulmonary Function Technicians		191	191	191	191	191
RTE National Symphony Orchestra		2476	2476	2476	2476	2476
RTE Concert Orchestra		2476	2476	2476	2476	2476
Shipping - British Merchant Navy Foreign-going trade	Master - First class passenger and cargo liners	318	318	318	318	318
Shipping - British Merchant Navy Foreign-going trade	Chief officer, chief engineer, other officers, including pursers - First class passenger and cargo liners	318	318	318	318	318
Shipping - British Merchant Navy Foreign-going trade	Chief steward - First class passenger and cargo liners	318	318	318	318	318
Shipping - British Merchant Navy Foreign-going trade	Assistant steward - First class passenger and cargo liners	244	244	244	244	244
Shipping - British Merchant Navy Foreign-going trade	Carpenter - First class passenger and cargo liners	194	194	194	194	194
Shipping - British Merchant Navy Foreign-going trade	Other ranks - First class passenger and cargo liners	148	148	148	148	148
Shipping - British Merchant Navy Foreign-going trade	Master - Cargo-vessels, tankers, ferries	318	318	318	318	318
Shipping - British Merchant Navy Foreign-going trade	Chief officer, chief engineer, other officers, including pursers - Cargo-vessels, tankers, ferries	318	318	318	318	318
Shipping - British Merchant Navy Foreign-going trade	Chief steward - Cargo-vessels, tankers, ferries	318	318	318	318	318
Shipping - British Merchant Navy Foreign-going trade	Assistant steward - Cargo-vessels, tankers, ferries	244	244	244	244	244
Shipping - British Merchant Navy Foreign-going trade	Carpenter - Cargo-vessels, tankers, ferries	194	194	194	194	194
Shipping - British Merchant Navy Foreign-going trade	Other ranks - Cargo-vessels, tankers, ferries	148	148	148	148	148
Shipping - British home or coasting trade	Master	318	318	318	318	318
Shipping - British home or coasting trade	Chief officer, chief engineer, other officers, including pursers	318	318	318	318	318
Shipping - British home or coasting trade	Chief steward	318	318	318	318	318
Shipping - British home or coasting trade	Assistant steward	244	244	244	244	244
Shipping - British home or coasting trade	Carpenter	194	194	194	194	194

Personal Tax Credits and Reliefs

Flat Rate Expenses for certain categories of Employment						
Category	Sub-category	2023	2022	2021	2020	2019
Shipping - British home or coasting trade	Other ranks	148	148	148	148	148
Shipping - Mercantile marine officers and crews of Irish ships - Foreign-going trade	Master - cargo vessels	98	98	98	98	98
Shipping - Mercantile marine officers and crews of Irish ships - Foreign-going trade	Chief officer, chief engineer, radio officer - cargo vessels	90	90	90	90	90
Shipping - Mercantile marine officers and crews of Irish ships - Foreign-going trade	Other officers including pursers - cargo vessels	73	73	73	73	73
Shipping - Mercantile marine officers and crews of Irish ships - Foreign-going trade	Chief steward - cargo vessels	73	73	73	73	73
Shipping - Mercantile marine officers and crews of Irish ships - Foreign-going trade	Assistant steward - cargo vessels	55	55	55	55	55
Shipping - Mercantile marine officers and crews of Irish ships - Foreign-going trade	Carpenter (to include tools) - cargo vessels	55	55	55	55	55
Shipping - Mercantile marine officers and crews of Irish ships - Foreign-going trade	Other ranks, including boys - cargo vessels	37	37	37	37	37
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Master - Cross channel and continental	98	98	98	98	98
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Chief officer, chief engineer, radio officer - Cross channel and continental	90	90	90	90	90
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Other officers, including pursers - Cross channel and continental	73	73	73	73	73
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Chief steward - Cross channel and continental	73	73	73	73	73
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Assistant steward - Cross channel and continental	55	55	55	55	55
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Carpenter (to include tools) - Cross channel and continental	55	55	55	55	55
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Other ranks including boys - Cross channel and continental	37	37	37	37	37
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Master - Coasting vessels	98	98	98	98	98
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Chief officer, chief engineer, radio officer - Coasting vessels	90	90	90	90	90

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Flat Rate Expenses for certain categories of Employment						
Category	Sub-category	2023	2022	2021	2020	2019
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Other officers, including pursers - Coasting vessels	73	73	73	73	73
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Chief steward - Coasting vessels	73	73	73	73	73
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Assistant steward - Coasting vessels	55	55	55	55	55
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Carpenter (to include tools) - Coasting vessels	55	55	55	55	55
Shipping - Mercantile marine officers and crews of Irish ships - Home trade	Other ranks, including boys - Coasting vessels	37	37	37	37	37
Shop Assistants (including supermarket staff, general shop workers,		121	121	121	121	121
Social Workers who pay the statutory registration fee to CORU		100	100	100	100	100
Speech and Language Therapists	Where obliged to supply and launder own uniforms (includes CORU)	370	370	370	370	220
Speech and Language Therapists	Where obliged to supply but do not launder their own uniforms (includes CORU)	320	320	320	320	220
Speech and Language Therapists	Where obliged to launder the uniforms supplied (includes CORU)	150	150	150	150	100
Surveyors employed by Local Authorities		127	127	127	127	127
Surveyors employed by Civil Service		127	127	127	127	127
Surveyors employed by Coillte		127	127	127	127	127
Teachers	School principals	608	608	608	608	608
Teachers	Other teachers	518	518	518	518	518
Teachers	Part-time teacher (on full hours)	518	518	518	518	518
Teachers	Part-time (not on full hours)	279	279	279	279	279
Teachers	Guidance Counsellors - employed full-time in second level schools	518	518	518	518	518
Teachers	Guidance Counsellors - engaged mainly in teaching general subjects but also doing part-time guidance counselling (additional allowance)	126	126	126	126	126
Third level academic staff	Professor, Heads of Schools or Departments	608	608	608	608	608
Third level academic staff	Senior lecturer	518	518	518	518	518
Third level academic staff	College lecturer	518	518	518	518	518
Third level academic staff	Assistant lecturer	518	518	518	518	518
Third level academic staff	Part-time lecturer (on full hours)	518	518	518	518	518
Third level academic staff	Part-time lecturer (not on full hours)	279	279	279	279	279
Physical education teachers (teacher must hold qualification in physical education)	Fully engaged in teaching P.E.	518	518	518	518	518
Physical education teachers (teacher must hold qualification in physical education)	engaged mainly in teaching general subjects (additional allowance)	126	126	126	126	126

Flat Rate Expenses for certain categories of Employment					
Category	Sub-category	2023	2022	2021	2020
Veterinary Surgeons in Employment	who incur, and are not reimbursed the cost of the Registration Fee to the Veterinary Council	621	621	621	621
Veterinary Surgeons in Employment -	who do not incur, or are reimbursed the cost of the Registration Fee to the Veterinary Council	171	171	171	171
Veterinary Nurses	where obliged to supply and launder their own	400	400	400	400
Veterinary Nurses	where obliged to launder the uniforms supplied	150	150	150	150

Example 16

- (a) Pat Kelly is single and earns €1,675 per month. His monthly SRCOP and tax credits are €3,333.34 and €295.84 respectively. Calculate his income tax liability for January.

Pat's monthly earnings	€1,675.00
SRCOP	€3,333.34

Gross tax:	€1,675.00 @ 20% =	€335.00
Less tax credits:		<u>€295.84</u>
Net tax liability		€39.16

- (b) Where he is entitled to additional tax relief of €1,000 in respect of expenses incurred in his employment, the calculation of his tax liability is different, as follows:

Pat's SRCOP is €41,000 (€40,000 + €1,000), as the annual SRCOP is increased by the amount of the expenses that qualify for tax relief. In addition, his tax credits are also increased by the amount of the expenses relieved at the standard rate of tax.

	SRCP	Tax Credits
Single Person	€40,000.00	€1,775.00
PAYE		€1,775.00
Expenses	€1,000.00 @ 20% =	€200.00
Annual	€41,000.00	€3,750.00
Monthly	€3,416.67	€312.50

Pat's monthly earnings	€1,675.00
SRCOP	€3,416.67

Gross tax:	€1,675.00 @ 20% =	€335.00
Less tax credits:		<u>€312.50</u>
Net tax liability		€22.50

His income tax liability has now been reduced by €16.66 per month (€39.16 - €22.50), or €200 per year, the value of the tax relief due on the expenses allowance of €1,000 per year.

- (c) If his monthly salary was €3,433.34 (€41,200 per year), the following are the two different calculations of tax liability which arise where the same circumstances as outlined above apply:

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<i>Pat's monthly earnings</i>		$\text{€}3,433.34$
<i>SRCOP</i>		$\text{€}3,333.34$
<i>Gross tax:</i>	$\text{€}3,333.34 @ 20\% =$	$\text{€}666.67$
	$\underline{\text{€}100.00} @ 40\% =$	$\underline{\text{€}40.00}$
	$\text{€}3,433.34$	$\text{€}706.67$
<i>Less tax credits:</i>		$\underline{\text{€}295.84}$
<i>Net tax liability</i>		$\text{€}410.83$

- (d) Where Pat is entitled to additional tax relief in respect of expenses incurred in his employment of €1,000 per year the calculation of his liability is different.

Pat's SRCOP is €41,000 ($\text{€}40,000 + \text{€}1,000$), as the annual SRCOP is increased by the amount of the expenses that qualify for tax relief. In addition his tax credits are also increased by the amount of the expenses relieved at the standard rate of tax.

<i>Pat's monthly earnings</i>		$\text{€}3,433.34$
<i>SRCOP</i>		$\text{€}3,416.67$
<i>Gross tax:</i>	$\text{€}3,416.67 @ 20\% =$	$\text{€}683.33$
	$\underline{\text{€}16.67} @ 40\% =$	$\underline{\text{€}6.66}$
	$\text{€}3,433.34$	$\text{€}689.99$
<i>Less tax credits:</i>		$\underline{\text{€}312.50}$
<i>Net tax liability</i>		$\text{€}377.49$

Note: In the two examples (c) and (d) above, when Pat's earnings exceed his SRCOP, all of the excess is taxable at 40%. What this illustrates is that the increase in his tax credits only affects the amount of tax payable at the 20% rate. This is what is known as being relieved at the standard rate of income tax only.

The difference in his income tax liability is €33.34 ($\text{€}410.83 - \text{€}377.49$), because the expense allowance of €1,000 reduces his annual income tax liability by $\text{€}1,000 \times 40\% = \text{€}400 / 12 \text{ months} = \text{€}33.34$. This happens because:

- He obtains an additional tax credit of €200 ($\text{€}1,000 @ 20\%$), and
- He obtains a reduction of €1,000 in the amount of his income, which is taxable at the higher rate.

His income taxable at 40% is reduced by €1,000, and his income taxable at 20% is increased by €1,000. This results in a saving of €200 i.e. 20% of €1,000 ($\text{€}1,000 @ (40\% - 20\%)$). When combined with the increase in the tax credit of €200, this gives an overall reduction of €400 per year or €33.34 per month.

CHAPTER 5

Revenue Payroll Notification

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1. Introduction

Since 1st January 2019, a Revenue Payroll Notification (RPN) replaced the employer's copy of a Tax Credit Certificate (P2C). Employees who are registered for myAccount will receive an electronic copy of their Tax Credit Certificate while other employees should be able to obtain a paper copy from Revenue on request. An RPN provides the employer with the necessary information to deduct Income tax, USC and LPT for each employee.

2. Communicating with Revenue

Revenue provides 3 main methods for employers to communicate payroll information with ROS, namely:

- **Direct Payroll Integration** – where payroll software will communicate directly with ROS without the need for the employer to log in to ROS. Payroll integration enables employers to retrieve RPNs and make Payroll Submissions within the payroll software without logging in to ROS, however the employer will be required to log in to ROS to view and accept the monthly statement and make payment.
- **Upload and Download** – where an employer can download an RPN file from ROS onto his computer and import it into his payroll software, or create a Payroll Submission file in his payroll software which can then be uploaded into ROS, and
- **ROS Online** – where the ROS user can enter the relevant payroll information directly into ROS. This option will primarily be used by employers or agents who do not use payroll software. ROS will not perform any payroll calculations.

In a small number of cases where an employer has been granted an exemption from electronic filing, Revenue will make paper returns available to that employer to enable them to meet their obligations.

In exceptional circumstances, where the employer is experiencing a persistent technology systems failure, and the employer is unable to retrieve the most recent RPN for an employee or make a Payroll Submission and the employer is under a legal obligation to pay the employee, the employer is permitted to pay the employee and deduct tax and USC based on the most recent RPN information available to the employer (or under the Emergency Basis in the absence of an RPN) and make a Payroll Submission immediately once the failure has been rectified.

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3. Revenue Payroll Notification

To register an employment with Revenue an employer will simply request an RPN for an employee using 1 of the 3 methods of communication as outlined above. Where the employer holds a PPSN for an employee and the employee is registered for tax purposes, Revenue will make an RPN available to the employer in respect of that employee.

An RPN will not be made available where the employer does not hold the employee's PPSN or the employee is not registered for tax purposes, for example where the employee has not registered his first employment in Ireland online using the Jobs and Pension Service.

An employer should request an up to date RPN for each employee as part of the normal payroll process each pay period.¹

An RPN will contain the following information in respect of each employee:

Data Item	Description
RPN Number	This is the number of the RPN issued to the employer in respect of an employee. It is used in conjunction with the Employee PPSN to uniquely identify the instruction issued
RPN Issue Date	
First Name	
Family Name	
Employee PPSN	Used to identify the employee to which the RPN relates
Previous Employee PPSN	Used to identify employee's previous PPSN, if applicable (e.g. a W PPSN). It should only appear if changed since previous submission. This will continue to appear until Revenue knows that the payroll operator has updated the Employee PPSN in their own system (i.e. until Revenue receives a submission with the new PPSN).
Employment ID	Used to uniquely identify each employment for the employee. It is provided to Revenue by the employer when setting up the employment. If the RPN is being triggered as a result of the employee setting up the employment via Jobs and Pension, this field will not be populated.
Employer Reference	Unique employee identifier used to identify the employment of the employee.
Income Tax Calculation Basis	Cumulative or Week 1
Effective Date	The RPN can be used from the effective date until it is updated again. If the RPN issued before the start of the tax year in question, this will be set to 1st January of that new tax year.

¹ Income Tax (Employments) Regulations 2018. Regulation 6. S.I. 345 of 2018

	If the RPN issues during the tax year, the date is dependent on the calculation basis (i.e. if the calculation basis is Cumulative, the date will be 1 st January. If the calculation basis is Week 1, the date will be the same as the issue date.
End Date	For Cumulative RPNs the end date will be the 31 st December. For RPNs issued on a Week 1 Basis, the date may be any date following the effective date and before the end of the year.
Pay for Income Tax to Date	This will include total income liable to Income Tax to date from previous employments. In the case of recommencements, this includes previous pay for Income Tax purposes from a previous employment with that employer in the same tax year. Pay for Income Tax purposes submitted by the current employer in previous Payroll Submissions for the current employment are not included in this field. This field will be populated where the Income Tax Calculation Basis is Cumulative.
Income Tax Deducted to Date	Total amount of employee's Income Tax deducted to date from previous employments, taking account of any claims for a tax refund during a period of unemployment. In the case of recommencements, this includes previous tax deducted by that employer in a previous employment in the same tax year. Income Tax submitted by the current employer in previous Payroll Submissions for the current employment is not included in this field. This field will be populated where the Income Tax Calculation Basis is cumulative.
Yearly Tax Credit	Amount of tax credits available to the employee for the year the RPN relates to. A breakdown is displayed to employee through PAYE Services.
Tax Rate 1 Percent	Rate to be applied to any income below employee's SRCOP. Current rate is 20%.
Yearly Rate 1 Cut Off - (SRCOP)	SRCOP for the year the RPN relates to. Breakdown is displayed to employee through PAYE Services.
Tax Rate 2 Percent	Rate to be applied to any income above employee's SRCOP. Current rate is 40%.
Employee is exempt from PRSI in Ireland	Set to "True" if employee has been granted an exemption from paying PRSI in Ireland. This field is not included if employee is not exempt from paying PRSI. This will appear only where DSP carries out a review and determines that the individual should be exempt from paying PRSI in Ireland.
PRSI Class and Subclass	PRSI Class and Subclass that the employee should be updated to.

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	This will appear only where DSP updates the class or where DSP knows the individual is on the wrong class (i.e. where a review has been carried out by DSP).
USC Status	Ordinary or Exempt
USC Rate 1 Percent	USC Rate 1 Percent applicable to USC Status Ordinary in the year the RPN relates to. Current rate is 0.5%
Yearly USC Rate 1 Cut Off	Yearly USC rate 1 cut off applicable to USC Status Ordinary in the year the RPN relates to.
USC Rate 2 Percent	USC Rate 2 Percent applicable to USC Status Ordinary in the year the RPN relates to. Current rate is 2%
Yearly USC Rate 2 Cut Off	Yearly USC rate 2 cut off applicable to USC Status Ordinary in the year the RPN relates to.
USC Rate 3 Percent	USC Rate 3 Percent applicable to USC Status Ordinary in the year the RPN relates to. Current rate is 4.5%
Yearly USC Rate 3 Cut Off	Yearly USC rate 3 cut off applicable to USC Status Ordinary in the year the RPN relates to.
USC Rate 4 Percent	USC Rate 4 Percent applicable to USC Status Ordinary in the year the RPN relates to. Current rate is 8%
Pay for USC to Date	<p>This will include total income liable to USC to date from previous employments. In the case of recommencements, this includes previous pay for USC purposes from a previous employment with that employer in the same tax year.</p> <p>Pay submitted by the current employer in previous Payroll Submissions for the current employment is not included in this field.</p> <p>This field will be populated where the Income Tax Calculation Basis is Cumulative.</p>
USC Deducted to Date	<p>Total amount of employee's USC deducted to date from previous employments, taking account any claims for a USC refund during a period of unemployment.</p> <p>In the case of recommencements, this includes previous USC deducted by that employer in a previous employment in the same tax year. USC submitted by the current employer in previous Payroll Submissions for the current employment is not included in this field.</p> <p>This field will be populated where the Income Tax Calculation Basis is Cumulative.</p>
LPT to be Deducted	Amount of LPT to be deducted through payroll.
Employment Cessation Date	This date will be present where the employment has been ceased. RPNs for ceased employments are required if a post cessation payment is being made. The Employment Cessation Date allows the employer/payroll operator to distinguish between RPNs for live employments and ceased employments.

As outlined in the table above:

- An RPN shows the annual tax credits, SRCOP and USC COPs allocated to that employment and whether tax and USC are to be operated on the Cumulative or Week 1 Basis. Weekly, fortnightly, monthly, 4-weekly amounts, etc. will be determined by payroll software or employer based on employee's pay frequency.
- Tax Rate 1 Percent is more commonly known as the Standard Rate of tax (currently 20%) and Tax Rate 2 Percent is more commonly known as the Higher Rate of tax (currently 40%). In this text we will refer to the standard rate and the higher rate.
- Yearly Rate 1 Cut Off Point is more commonly known as the Standard Rate Cut Off Point.
- Pay for Income Tax to date is generally referred to as Taxable pay.

The previous Employee PPSN field facilitates the withdrawal of "W" PPSNs which were previously issued to women when they got married (i.e. the woman was issued with her husband's PPSN with a "W" at the end). The employee's PPSN may already be updated on the DSP and Revenue records but was never updated on the employer's payroll records. Where an employer tries to request an RPN using a W PPSN, which has already been updated by DSP and Revenue (i.e. that PPSN is now inactive), they will receive a response saying that it was an invalid PPSN. Where the W PPSN is still active, an RPN should issue in the normal manner.

An RPN is only valid for the tax year to which it relates and will not be valid for subsequent years. As outlined in the chapter entitled "Calculation of Income Tax under the PAYE System", the Emergency Basis of tax applies where an employer does not hold an RPN for an employee for a tax year (e.g. where an employee does not have a PPSN or is not registered for PAYE). However, where an employee holds a PPSN and is registered for PAYE, it should be possible for the employer to request an RPN for that employee. However, where the individual is recorded as being employed elsewhere on Revenue's records, this will result in an RPN being issued with no tax credits, SRCOP or USC COPs.

Each RPN issued for an employee in a tax year will contain an RPN Number. The RPN number should be included in the Payroll Submission where the calculation of tax and USC is based on the RPN. This will enable Revenue to identify if the employer is using the most up to date RPN.

Where the application of an RPN results in undue hardship for an employee, the employer should contact Revenue who will make a Week 1 RPN available for the employer to request immediately. Where this situation arises outside normal working hours, the employer is permitted to override the cumulative RPN and switch the employee to a Week 1 Basis. The employer should then contact Revenue on the next working day and a revised RPN will be made available to the employer.

Revenue issues the bulk release of RPNs each tax year in early December of the preceding tax year, with subsequent RPNs being issued when required due to changes in the employee's personal circumstances throughout the remainder of the year.

The following is a sample of information which an employer will receive on an RPN. Figures used are for illustration purposes only, as they will vary depending on the personal circumstances of each individual.

Example 1

Margaret Kelly commenced employment with ABC Ltd in week 1. ABC Ltd requested an RPN for Margaret which contained the following information:

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Employee Name	Margaret Kelly	PPSN	1234567A
Standard Rate of Tax	20%	Higher Rate of Tax	40%
Tax Credit	€3,550	SRCP	€40,000
Tax Basis	Cumulative	Effective Date	1 st January
USC Rate 1	0.5%	USC Rate 1 COP	€12,012
USC Rate 2	2%	USC Rate 2 COP	€22,920
USC Rate 3	4.5%	USC Rate 3 COP	€70,044
USC Rate 4	8%	USC Basis	Ordinary

Example 2

Sean Ryan commenced employment with ABC Ltd in week 40. ABC Ltd requested an RPN for Sean which contained the following information:

Employee Name	Sean Ryan	PPSN	1257486A
Standard Rate of Tax	20%	Higher Rate of Tax	40%
Tax Credit	€5,325	SRCP	€49,000
Tax Basis	Cumulative	Effective Date	1 st January
Taxable pay to date	€31,200	Tax deducted to date	€2,246.01
USC Rate 1	0.5%	USC Rate 1 COP	€12,012
USC Rate 2	2%	USC Rate 2 COP	€22,920
USC Rate 3	4.5%	USC Rate 3 COP	€70,044
USC Rate 4	8%	USC Basis	Ordinary
Pay for USC to date	€31,200	USC deducted to date	€839.10

Example 3

Ciara Dunne commenced employment with ABC Ltd in March. ABC Ltd requested an RPN for Ciara which contained the following information:

Employee Name	Ciara Dunne	PPSN	3458767V
Standard Rate of Tax	20%	Higher Rate of Tax	40%
Tax Credit	€1,775	SRCP	€31,000
Tax Basis	Week 1	Effective Date	1 st March
USC Rate 1	0.5%	USC Rate 1 COP	€12,012
USC Rate 2	2%	USC Rate 2 COP	-
USC Rate 3	4.5%	USC Rate 3 COP	-
USC Rate 4	8%	USC Basis	Ordinary

Example 4

Leah Smith commenced employment with ABC Ltd in July. ABC Ltd requested an RPN for Leah which contained the following information:

Employee Name	Leah Smith	PPSN	9876543B
Standard Rate of Tax	20%	Higher Rate of Tax	40%
Tax Credit	€0.00	SRCP	€0.00
Tax Basis	Week 1	Effective Date	10 th July
USC Rate 1	0.5%	USC Rate 1 COP	-
USC Rate 2	2%	USC Rate 2 COP	-
USC Rate 3	4.5%	USC Rate 3 COP	-
USC Rate 4	8%	USC Basis	Ordinary

3.1 Requesting an RPN from Revenue

The following screenshots illustrate how an employer requests RPNs for existing employees from Revenue by online form on ROS.

For the purpose of this text we are focusing on the option to request RPNs by online form. As outlined in section 2 above, this option is primarily used by those who do not use payroll software. Those employers who use the Direct Payroll Integration method of retrieving RPNs will do so from within their payroll software and will not encounter the ROS screens outlined below.

An employer is required to log into ROS on the Revenue homepage. He should select the digital certificate required for the relevant payroll and enter his password.

The screenshot shows the ROS Secure Login page. At the top, there is a yellow warning message: "Please be aware that ROS sub-user certificates do not have access to the ROS Revenue Record. Admin users still have full access. We are working on resolving this issue." Below this, there are three steps: 1. Select Certificate, which shows a dropdown menu with "3502846mh"; 2. Enter Password, which has a masked input field and "Change password" and "Reset Login" buttons; 3. Login, which has a "Login to ROS" button and a "ROS Help" link. To the right of the login form, there is a sidebar with the title "Revenue Online Service" and a description of what it does. Below that is a "Useful Links" section with links to various Revenue services.

This will bring the user to the “My Services” page. Under Employer Services, the user should select Request RPN.

The screenshot shows the "My Services" page. At the top, there is a navigation bar with links for GAEILGE, ENGLISH, ROS HELP, SARA-ER-STARK-STARK, and EXIT. Below this is a header with "Revenue" and "MY SERVICES", "REVENUE RECORD", "PROFILE", "WORK IN PROGRESS", and "ADMIN SERVICES". A message "No current tax clearance certificate." is displayed. Below this is a section titled "My Frequently Used Services" with a "Add a service +" button. Under "Employer Services", there are four categories: "Revenue Payroll Notifications (RPNs)" (with a red oval around "Request RPNs"), "Payroll" (with "Submit payroll" and "View payroll"), "Returns" (with "Statement of Account"), and "Additional Services" (with "PPS Number Checker" and "PAYE Modernisation Information").

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Employers who have more than one employer registration number will have an option to select the employer registration number they wish to request an RPN for.

The screenshot shows a modal dialog titled "You have multiple PREM registrations". It instructs the user to "Please select the PREM registration you would like to manage payroll for." A table lists three registration entries:

Registration Name	Registration Number	Action
SARA-ER-MURRAY GROUP	03499729VH	Select
SARA-ER-MURRAY GROUP	03503103RH	Select
SARA-ER-MURRAY GROUP	03503102PH	Select

A red circle highlights the "Select" button next to the first registration entry. Below the table is a "Back" button. The background shows a sidebar with various service links and a main menu area.

Once the employer registration number has been selected, the user is brought to the Request RPN screen which provides the user with the option to “Upload request file” or “Complete online form”. In the Complete online form section, click on the link for Request RPNs by online form.

The screenshot shows the "Request Revenue Payroll Notifications (RPNs)" page. At the top, there is a "Back" link. The main content area is titled "Request Revenue Payroll Notifications (RPNs)" and contains the following text: "You must always ensure that payroll is run based on the most up to date RPNs. You can request RPNs for your employees by uploading a request file or by completing our online form. [Learn more](#)".

Two sections are present:

- Upload request file**: A box containing instructions: "If your software produces an RPN request file, you can upload it here. Your file must be in either JSON or XML format. Separate files should be uploaded for existing or new employees." Below this is a blue link: "Request RPNs by file upload".
- Complete online form**: A box containing instructions: "If you do not have a file to upload, you can request RPNs for your existing or new employees using our online form." Below this is a blue link: "Request RPNs by online form". This link is circled in red.

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The employer is now presented with the option of requesting an RPN for existing employees or new employees. Select existing employees and click next.

Revenue
Cais agus Cúnta an Mhóine
Irish Tax and Customs

Payroll Reporting

[Back](#)

Request RPNs by online form

You can use our online form to request RPNs for any of your existing or new employees. Please select the relevant option.

Existing employees

New employees

[^ Which should I choose?](#)

Existing employees refer to individuals who have not ceased in your employment. New employees refer to individuals who have commenced or re-commenced in your employment.

Next →

The user should enter the date of his last payroll to receive RPNs since that date. Select the option for all employees and select the file format required (CSV is the most readable version). Click the Request RPNs button (which is omitted from the screenshot below) to obtain RPNs for existing employees.

Revenue
Cais agus Cúnta an Mhóine
Irish Tax and Customs

Payroll Reporting

[Back](#)

Request RPNs for existing employees

Tax year

Date of last RPN request (optional) [\(i\)](#)
DD/MM/YYYY

Select employees

Select all employees

Select specific employees

File format for RPNs to be received [\(i\)](#)

CSV

JSON

XML

Request RPNs

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It is also possible to request RPNs for specific employees by clicking on select specific employees on the above screen and entering the employee's PPSN and Employment ID.

The user should enter his password before signing and submitting.

The screenshot shows a web-based payroll reporting system. At the top left is the Revenue logo with the text "Revenue" and "Céard agus Contáine an Áilínneach". To its right is the title "Payroll Reporting". Below this is a "Please confirm your password" section. It includes a "Digital Certificate" field containing the number "3502846nh", a "Password" field with masked input, and a blue "Sign & Submit" button at the bottom right.

On the RPN request results screen the user can view the full RPN details by clicking the view details link.

The screenshot shows the "RPN request results" page. It features a "Summary results of RPN request" section with a message about successful processing and a download link. Below this is a table titled "RPNs returned" with columns for RPN Number, RPN issue date, First name, Family name, PPS number, Employment ID, and Action. A row for "3" entries is shown, with the "Action" column containing a "View details" link which is circled in red. There is also a link "What do these results mean?". A "RPNs returned" section below the table provides a summary of the number of successfully returned RPNs. At the bottom right is a blue "ROS homepage" button.

RPN Number	RPN issue date	First name	Family name	PPS number	Employment ID	Action
3	2018-09-10	JOE	MURPHY	1545274P	1	View details

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A pop up will appear showing the RPN information.

RPN		RPN Number: 7																																								
Employer: Test Customer		Effective date: 2019-01-01 End date: 2019-12-31																																								
<table border="1"><thead><tr><th colspan="2">Employee details</th><th colspan="2">Income Tax - Pay As You Earn (PAYE)</th></tr></thead><tbody><tr><td colspan="2">Name</td><td>Income Tax calculation</td><td>Week 1</td></tr><tr><td>First name</td><td>JOE</td><td>Basis</td><td></td></tr><tr><td>Family name</td><td>BLOGGS</td><td>Yearly tax credits</td><td>€0.00</td></tr><tr><td colspan="2">Employee ID</td><td colspan="2">Tax rates</td></tr><tr><td>PPS number</td><td>097585680</td><td>Tax rate 1</td><td>20%</td></tr><tr><td>Employment ID</td><td>1</td><td>Yearly rate cut off</td><td>€0.00</td></tr><tr><td colspan="2"></td><td>Tax rate 2</td><td>40%</td></tr><tr><td colspan="2">Universal Social Charge (USC)</td><td>Pay for Income Tax to date</td><td>€0.00</td></tr><tr><td>USC status</td><td>ORDINARY</td><td>Income Tax deducted to date</td><td>€0.00</td></tr></tbody></table>			Employee details		Income Tax - Pay As You Earn (PAYE)		Name		Income Tax calculation	Week 1	First name	JOE	Basis		Family name	BLOGGS	Yearly tax credits	€0.00	Employee ID		Tax rates		PPS number	097585680	Tax rate 1	20%	Employment ID	1	Yearly rate cut off	€0.00			Tax rate 2	40%	Universal Social Charge (USC)		Pay for Income Tax to date	€0.00	USC status	ORDINARY	Income Tax deducted to date	€0.00
Employee details		Income Tax - Pay As You Earn (PAYE)																																								
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<table border="1"><thead><tr><th colspan="2">USC rates</th><th colspan="2">Pay Related Social Insurance (PRSI)</th></tr></thead><tbody><tr><td>USC rate 1</td><td>0.5%</td><td>PRSI exempt</td><td>No</td></tr><tr><td>USC rate 1 cut off</td><td>€0.00</td><td>PRSI class</td><td>-</td></tr><tr><td>USC rate 2</td><td>2%</td><td colspan="2">Local Property Tax (LPT)</td></tr><tr><td>USC rate 2 cut off</td><td>€0.00</td><td>LPT to deduct</td><td>€0.00</td></tr><tr><td>USC rate 3</td><td>4.75%</td><td colspan="2"></td></tr><tr><td>USC rate 3 cut off</td><td>€0.00</td><td colspan="2"></td></tr><tr><td>USC rate 4</td><td>8%</td><td colspan="2"></td></tr><tr><td>Pay for USC to date</td><td>€0.00</td><td colspan="2"></td></tr><tr><td>USC deducted to date</td><td>€0.00</td><td colspan="2"></td></tr></tbody></table>			USC rates		Pay Related Social Insurance (PRSI)		USC rate 1	0.5%	PRSI exempt	No	USC rate 1 cut off	€0.00	PRSI class	-	USC rate 2	2%	Local Property Tax (LPT)		USC rate 2 cut off	€0.00	LPT to deduct	€0.00	USC rate 3	4.75%			USC rate 3 cut off	€0.00			USC rate 4	8%			Pay for USC to date	€0.00			USC deducted to date	€0.00		
USC rates		Pay Related Social Insurance (PRSI)																																								
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USC rate 4	8%																																									
Pay for USC to date	€0.00																																									
USC deducted to date	€0.00																																									
Print screen		Close																																								

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To request an RPN for a new employee, in the Request RPNs by online form screen, the employer should select new employees and click next to proceed. The employer will then be required to provide the first name, family name, PPSN and Employment ID and employment commencement date for each new employee. Once the details are entered, click the add button to add the employee to the RPN request. Once added their details will appear on screen.

The screenshot shows a web-based form titled "Request RPNs for new employees". At the top, there is a dropdown menu labeled "Tax year" with "2018" selected. Below it, a section titled "Add new employees" contains instructions: "Enter new employee's first name, family name, PPS number, employment ID and commencement date, then click 'Add'". The form has several input fields: "First name" (containing "Joe"), "Family name" (containing "Murphy"), "PPS number" (containing "1545274P"), "Employment ID" (containing "1"), and "Employment commencement date" (containing "27/08/2018"). At the bottom of the form is a blue button labeled "+ Add".

Once the RPN request is complete, it should be signed and submitted.

4. Employment ID

An Employment Identifier (ID) is a required field which must be submitted when requesting an RPN. An Employment ID can only be generated where the employee has a PPSN.

The Employment ID uniquely identifies each employment an employee holds with an employer and should not change for the duration of the employment. It is used to distinguish between multiple employments for an employee with the same employer as well as different periods of employment with the same employer i.e. where an employee ceases and recommences employment with the same employer in the same tax year.

In most circumstances it is likely that the Employment ID will be generated by the payroll software. For those employers operating manual payrolls and requesting RPNs online, an Employment ID will have to be entered when requesting the first RPN for an employee.

Employers may need to manage Employment IDs especially where different payroll software is used for different payrolls or where a payroll is outsourced, etc. As employers are required to manage the use of Employment IDs, it will not be possible for an employee to register a multiple employment with the same employer on myAccount.

If an employee leaves and subsequently recommences employment with the same employer in the same tax year a new Employment ID is required as it is considered a new employment. It is important to note that the Employment ID is not necessarily the same as a staff number or works number and there is no need to integrate it or replace it in any HR system.

An Employment ID is used as a mechanism for splitting tax credits and SRCOPs where the employee has more than 1 employment with the same employer at the same time.

Example 5

Amanda Byrne has 3 separate contracts of employment with ABC Ltd. As ABC Ltd wish to keep each contract separate, Amanda was set up on the payroll 3 times with 3 different Employment IDs under that employer registration number. This enables Revenue to issue 3 RPNs in respect of Amanda, which is illustrated as follows:

RPN No.	Employee Name	PPSN	Employment ID	Yearly tax credits	Yearly SRCOP
1	Amanda Byrne	1234567T	1	€3,550	€40,000
3	Amanda Byrne	1234567T	2	€0.00	€0.00
6	Amanda Byrne	1234567T	3	€0.00	€0.00

Note: While it is the employer's responsibility to create Employment IDs as required, it is the employee's responsibility to manage the allocation of tax credits, SRCOPs and USC COPs between the different employments which can be done via MyAccount or by contacting Revenue.

While not included in the table above, USC COPs can also be allocated between the employments in a similar manner to tax credits and SRCOPs.

Where an employer does not wish to distinguish between multiple employments with the same employer, he is not obliged to set up a new Employment ID, unless the employee is recommencing employment with the same employer in the same tax year, in which case a new Employment ID is required.

Example 6

Following on from Example 5 above, Amanda has logged on to myAccount and reallocated her SRCOP and tax credits to each employment. This results in 3 updated RPNs being issued to her employer with the updated figures as follows.

RPN No.	Employee Name	PPSN	Employment ID	Yearly tax credits	Yearly SRCOP
4	Amanda Byrne	1234567T	1	€1,150	€11,500
7	Amanda Byrne	1234567T	2	€1,200	€14,250
8	Amanda Byrne	1234567T	3	€1,200	€14,250

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Calculation of Income Tax under the PAYE System

- 1. Cumulative Basis**
 - 2. Tax Deduction Cards**
 - 3. New Employee**
 - 4. First Employment in a Tax Year**
 - 5. Emergency Basis**
 - 6. Week 1 / Month 1 (Non-Cumulative) Basis**
 - 7. Week 53**
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1. Cumulative Basis

The calculation of an employee's Income tax liability under the PAYE system is usually carried out on what is known as the Cumulative Basis¹ of assessment and understanding how the Cumulative Basis works is crucial to understanding the PAYE system. Every employer is notified of each employee's annual tax credits and SRCOP on a Revenue Payroll Notification (RPN) and the employer must use this information to calculate an employee's Income tax liability in each pay period. The RPN must indicate that the Cumulative Basis applies (i.e. the RPN is effective from 1st January to 31st December in that tax year) for the employer to apply the Cumulative Basis.

Applying the Cumulative Basis means that a person's Income tax liability is not calculated on the payment which an employee receives in each week, or month, in isolation. Instead, it works by calculating the Income tax liability arising on a person's income from the commencement of the tax year to date, taking account of the employee's total earnings to date and his accumulated weekly tax credits and SRCOP. In this way, an employee's tax liability is recalculated each time he receives a payment and as only a portion of his annual income is earned at any given time, he is granted a portion of his annual tax credits and annual SRCOP appropriate to that period of time.

For weekly paid employees, the amount of the annual tax credits and SRCOP are divided into 52 equal weekly segments. For monthly paid employees the annual figures are divided into 12 equal segments. Under the Cumulative Basis, both tax credits and the SRCOP are accumulated. This means that if a tax credit and/or a SRCOP are not used in full in a pay period, the unused portion can be carried forward and is available for offset against Income tax payable in a subsequent pay period.

Under the Cumulative Basis, the cumulative tax liability of a person is calculated on the income earned up to and including the current period (i.e. the current week or month depending on whether the individual is paid weekly or monthly). The difference between the cumulative tax liability of the current period and the cumulative tax liability paid to date (usually that paid up to the previous week or month) is the tax liability for the current period (i.e. week or month). While

¹ Income Tax (Employments) Regulations 2018 – S.I. 345/2018 – Regulation 11

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this may sound confusing at first, subsequent examples in this chapter should clearly illustrate the operation of the Cumulative Basis.

Under the Cumulative Basis, where an employee is absent from work due to sickness or similar cause and is not entitled to be paid by the employer while on such an absence, the employee is entitled to request that the employer refund any Income tax due under the Cumulative Basis, if a cumulative RPN is held by his employer (e.g. where an employee's Illness Benefit claim does not exceed 4 weeks). Where an employee is in receipt of Illness Benefit from the DSP for more than 4 weeks, a new RPN will be issued on a Week 1/Month 1 Basis by Revenue and if an employee wishes to claim a tax refund through payroll, he must first request a cumulative Tax Credit Certificate from Revenue which will result in a cumulative RPN being issued to his employer.

Under the Cumulative Basis, where an employee is absent from work due to any reason other than sickness or similar cause (e.g. unpaid parental leave, unpaid maternity leave or unpaid adoptive leave) and is not entitled to be paid by the employer while on such an absence, the employer is obliged to refund any Income Tax due to the employee under the Cumulative Basis, if a cumulative RPN is held by the employer. A refund will not be due in any pay period where the employer holds an RPN which was issued on the Week 1 Basis.

Employers may make a refund of tax under the Cumulative Basis in December using the latest RPN issued by Revenue, where due to irregular payments, there is no payment due to the employee. This is to enable the employee benefit from any unused tax credits and SRCOP.

2. Tax Deduction Cards

Most employers use computerised payroll software to calculate the Income tax, PRSI and USC liabilities of their employees. However, before computers became commonplace, payroll staff had to calculate the liabilities manually. In order to assist employers, Revenue issued a Tax Deduction Card (TDC) to employers in respect of each employee. The use of a TDC was of great assistance to payroll staff who had to calculate Income tax manually.

Revenue has ceased issuing TDCs to employers. For employers who wish to keep manual records, an electronic TDC can be downloaded from the Revenue website at:

<http://www.revenue.ie/en/employing-people/becoming-an-employer-and-ongoing-obligations/maintaining-your-records/electronic-tax-deduction-card-tdc.aspx>.

Regardless of how an employer keeps his payroll records, whether manually on a TDC or on payroll software, an employer is required to calculate the employee's liabilities using the latest RPN available and make a Payroll Submission to Revenue on or before each pay date.

The following is an example of a TDC, which explains how Income tax is calculated on the Cumulative Basis. Note that several columns as shown on the sample TDC do not appear on the electronic TDC issued by Revenue, but they are included in the examples to make the calculations easier to understand.

Column E on the following TDC includes details of the employee's SRCOP and Column J contains details of his tax credits. The figure in Column E for the SRCOP in Week 1 is 1/52nd of the annual SRCOP. The figure in Column E for week 2 is 1/52nd of the annual SRCOP multiplied by 2. The figure in Column E for week 3 is 1/52nd of the annual SRCOP multiplied by 3 and so on.

Calculation of Income Tax under the PAYE System

The figure in Column J for the tax credits in Week 1 is 1/52nd of the annual tax credits. The figure in Column J for week 2 is 1/52nd of the annual tax credits multiplied by 2. The figure in Column J for week 3 is 1/52nd of the annual tax credits multiplied by 3 and so on.

Under the Cumulative Basis, an employee's tax liability in any given pay period is calculated on his cumulative (aggregate) earnings up to that pay period, using the cumulative SRCOP and tax credits due to him at that date. In week 10, an employee's Income tax liability is calculated on his cumulative earnings up to week 10, based on his cumulative SRCOP and tax credits for 10 weeks (i.e. annual SRCOP and tax credits divided by 52 and multiplied by 10). When completing a TDC it should be completed one week at a time working from left to right across the card, to calculate the cumulative tax liability for each week, before moving on to do a similar calculation for the next week.

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Sample Tax Deduction Card

Annual SRCOP	€40,000	Annual Tax Credit	€3,550
Weekly SRCOP	€769.24	Weekly Tax Credit	€68.27

A	B	C	D	E	F	G	H	I	J	K	L	M
Week No.	Pay for EE PRSI this period	Taxable Pay	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative amount taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative Tax due (cannot be less than zero)	Tax deducted this period	Tax refunded this period
1	625.00	625.00	625.00	769.24	-	125.00	-	125.00	68.27	56.73	56.73	-
2	625.00	625.00	1,250.00	1,538.48	-	250.00	-	250.00	136.54	113.46	56.73	-
3	625.00	625.00	1,875.00	2,307.72	-	375.00	-	375.00	204.81	170.19	56.73	-
4	-	-	1,875.00	3,076.96	-	375.00	-	375.00	273.08	101.92	-	68.27
5	850.00	850.00	2,725.00	3,846.20	-	545.00	-	545.00	341.35	203.65	101.73	-
6	850.00	850.00	3,575.00	4,615.44	-	715.00	-	715.00	409.62	305.38	101.73	-
7	850.00	850.00	4,425.00	5,384.68	-	885.00	-	885.00	477.89	407.11	101.73	-
8	850.00	850.00	5,275.00	6,153.92	-	1,055.00	-	1,055.00	546.16	508.84	101.73	-
9	850.00	850.00	6,125.00	6,923.16	-	1,225.00	-	1,225.00	614.43	610.57	101.73	-
10	850.00	850.00	6,975.00	7,692.40	-	1,395.00	-	1,395.00	682.70	712.30	101.73	-
11	250.00	250.00	7,225.00	8,461.64	-	1,445.00	-	1,445.00	750.97	694.03	-	18.27
12	850.00	850.00	8,075.00	9,230.88	-	1,615.00	-	1,615.00	819.24	795.76	101.73	-
13	850.00	850.00	8,925.00	0.000.12	-	1,785.00	-	1,785.00	887.51	897.49	101.73	-

Enter Pay for EE PRSI this period (Gross pay less approved salary sacrifice)	Enter Taxable pay this period (Pay for EE PRSI purposes less any pension, PRSA, PHI or RAC contribution)	Enter the cumulative taxable pay to date here i.e. the sum of this week's pay and the cumulative taxable pay for the previous week	This column records the employee's cumulative SRCOP as per the RPN	If Column D is greater than Column E, enter the difference here; otherwise enter Nil	This equals the figure in Column D or E (which ever is lower) x 20%	This equals the figure in Column F x 40%	This equals the total of the figure in Column G plus the figure in Column H	This column records the employee's cumulative tax credits as per the RPN	This figure is equal to the difference between the figure in Column I and the figure in Column J where the figure in Column I is the greater, otherwise enter Nil	This figure is calculated as the cum. tax due to date, (Column K), minus the cum. tax due for the previous week, (Column K for the previous week)	If the cum. tax due this week is less than the cum. tax due for the previous week, the difference should be entered here
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Calculation of Income Tax under the PAYE System

Example 1

Adam Kelly earns €350 per week. His tax credits and SRCOP are €3,550 and €40,000 respectively. In week 4 he works overtime and earns an additional €25. Calculate his Income tax liability for each of the first 4 weeks of the year.

Solution 1

See the TDC for Adam Kelly on the following page, which outlines how his tax is calculated in weeks 1 to 4.

In Week 1, his Income tax liability is calculated as follows

<i>Pay for current week</i>		€ 350.00
<i>SRCP</i>	$\€ 40,000.00 / 52 \text{ weeks} =$	€ 769.24
<i>Gross tax at standard rate</i>	$\€ 350.00 @ 20\% =$	€ 70.00
<i>Gross tax at high rate</i>	$\€ 0.00 @ 40\% =$	€ 0.00
		<hr/>
<i>Less tax credits</i>	$\€ 3,550.00 / 52 \text{ weeks} =$	€ 68.27
<i>Net income tax liability</i>		<hr/> € 1.73

In Week 2, his Income tax liability is calculated as follows

<i>Cumulative pay</i>	$\€ 350 + \€ 350$	€ 700.00
<i>Cumulative SRCP</i>	$\€ 40,000.00 / 52 \times 2 \text{ weeks} =$	€ 1,538.48
<i>Gross tax at standard rate</i>	$\€ 700.00 @ 20\% =$	€ 140.00
<i>Gross tax at higher rate</i>	$\€ 0.00 @ 40\% =$	€ 0.00
		<hr/>
<i>Less: cumulative tax credits</i>	$\€ 3,550.00 / 52 \times 2 \text{ weeks} =$	€ 136.54
<i>Cumulative liability</i>		<hr/> € 3.46
<i>Less: cumulative tax liability to date</i>		<hr/> (€1.73)
<i>Net income tax liability</i>		<hr/> € 1.73

In Week 3, his Income tax liability is calculated as follows

<i>Cumulative pay</i>	$\€ 350 + \€ 350 + \€ 350$	€ 1,050.00
<i>Cumulative SRCP</i>	$\€ 40,000.00 / 52 \times 3 \text{ weeks} =$	€ 2,307.72
<i>Gross tax at standard rate</i>	$\€ 1,050.00 @ 20\% =$	€ 210.00
<i>Gross tax at higher rate</i>	$\€ 0.00 @ 40\% =$	€ 0.00
		<hr/>
<i>Less: cumulative tax credits</i>	$\€ 3,550.00 / 52 \times 3 \text{ weeks} =$	€ 204.81
<i>Cumulative liability</i>		<hr/> € 5.19
<i>Less: cumulative tax liability to date</i>		<hr/> (€3.46)
<i>Net income tax liability</i>		<hr/> € 1.73

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In Week 4, his Income tax liability is calculated as follows

Cumulative pay	$\text{€}350 + \text{€}350 + \text{€}350 + \text{€}375$	$\text{€}1,425.00$
Cumulative SRCOP	$\text{€}40,000.00 / 52 \times 4 \text{ weeks} =$	$\text{€}3,076.96$
Gross tax at standard rate	$\text{€}1,425.00 @ 20\% =$	$\text{€}285.00$
Gross tax at higher rate	$\text{€}0.00 @ 40\% =$	$\text{€}0.00$
		<hr/>
		$\text{€}285.00$
Less: cumulative tax credits	$\text{€}3,550.00 / 52 \times 4 \text{ weeks} =$	$\text{€}273.08$
Cumulative liability		<hr/> $\text{€}11.92$
Less: cumulative tax liability to date		<hr/> $(\text{€}5.19)$
Net income tax liability		<hr/> $\text{€}6.73$

You will note that in week 4 his tax liability has increased from €1.73 to €6.73, a difference of €5. This arises due to the fact Adam earned an additional €25 in overtime in week 4 and, as his cumulative pay never exceeds his cumulative SRCOP, his gross tax is only chargeable at the standard rate of 20% (i.e. €25 @ 20% = €5).

Solution to Example 1

Adam Kelly	Annual Tax Credits	€ 3,550
	Weekly Tax Credits	€ 68.27
	Annual SRCOP	€ 40,000
	Weekly SRCOP	€ 769.24

A	B	C	D	E	F	G	H	I	J	K	L	M
Week No.	Pay for EE PRSI this period	Taxable Pay this period	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative amount taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative Tax due (cannot be less than 0)	Tax deducted this period	Tax refunded this period
1	350.00	350.00	350.00	769.24	-	70.00	-	70.00	68.27	1.73	1.73	-
2	350.00	350.00	700.00	1,538.48	-	140.00	-	140.00	136.54	3.46	1.73	-
3	350.00	350.00	1,050.00	2,307.72	-	210.00	-	210.00	204.81	5.19	1.73	-
4	375.00	375.00	1,425.00	3,076.96	-	285.00	-	285.00	273.08	11.92	6.73	-
5				3,846.20					341.35			
6				4,615.44					409.62			
7				5,384.68					477.89			
8				6,153.92					546.16			
9				6,923.16					614.43			
10				7,692.40					682.70			

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Example 2

Continuing on from Example 1, Adam Kelly also works overtime in week 5 and earns an additional €25. He earns €350 in week 6 and in week 7 he takes a week off without pay. In week 8 he earns €350. Calculate his Income tax liability from weeks 5 to 8.

Solution 2

See the following TDC for Adam Kelly which outlines how his tax is calculated in weeks 5 to 8.

In Week 5, his Income tax liability is calculated as follows

Cumulative pay	$\text{€}350 + \text{€}350 + \text{€}350 + \text{€}375 + \text{€}375$	$\text{€}1,800.00$
Cumulative SRCOP	$\text{€}40,000.00 / 52 \times 5 \text{ weeks} =$	$\text{€}3,846.20$
Gross tax at standard rate	$\text{€}1,800.00 @ 20\% =$	$\text{€}360.00$
Gross tax at higher rate	$\text{€}0.00 @ 40\% =$	$\text{€}0.00$
		<hr/>
		$\text{€}360.00$
Less: cumulative tax credits	$\text{€}3,550.00 / 52 \times 5 \text{ weeks} =$	$\text{€}341.35$
Cumulative liability		<hr/>
		$\text{€}18.65$
Less: cumulative tax liability to date		<hr/>
Net income tax liability		$(\text{€}11.92)$
		<hr/>
		$\text{€}6.73$

His tax liability has also increased this week over the first 3 weeks from €1.73 to €6.73 a difference of €5. This arises due to the fact Adam earned an additional €25 in overtime in week 5 (i.e. €25 @ 20% = €5).

In Week 6, he earns €350 and his weekly tax liability is €1.73.

In Week 7, Adam does not have any income, but due to the way in which the Cumulative Basis works, he will now receive a refund of tax paid.

Cumulative pay	$\text{€}350 \times 4 + \text{€}375 \times 2$	$\text{€}2,150.00$
Cumulative SRCOP	$\text{€}40,000.00 / 52 \times 7 \text{ weeks} =$	$\text{€}5,384.68$
Gross tax at standard rate	$\text{€}2,150.00 @ 20\% =$	$\text{€}430.00$
Gross tax at higher rate	$\text{€}0.00 @ 40\% =$	<hr/> $\text{€}0.00$
		<hr/> $\text{€}430.00$
Less: cumulative tax credits	$\text{€}3,550.00 / 52 \times 7 \text{ weeks} =$	<hr/> $\text{€}477.89$
Cumulative liability		<hr/> $\text{€}0.00$
Less: cumulative tax liability to date		<hr/> $(\text{€}20.38)$
Net income tax liability		<hr/> $(\text{€}20.38)$

The tax refund of €20.38 is a refund of the total amount that has been paid to week 6.

Calculation of Income Tax under the PAYE System

In Week 8, his Income tax liability is calculated as follows

<i>Cumulative pay</i>	$\text{€}350 \times 5 + \text{€}375 \times 2$	$\text{€}2,500.00$
<i>Cumulative SRCOP</i>	$\text{€}40,000.00 / 52 \times 8 \text{ weeks} =$	$\text{€}6,153.92$
<i>Gross tax at standard rate</i>	$\text{€}2,500.00 @ 20\% =$	$\text{€}500.00$
<i>Gross tax at higher rate</i>	$\text{€}0.00 @ 40\% =$	$\text{€}0.00$
		<hr/>
<i>Less: cumulative tax credits</i>	$\text{€}3,550.00 / 52 \times 8 \text{ weeks} =$	$\text{€}546.16$
<i>Cumulative liability</i>		<hr/>
<i>Less: cumulative tax liability to date</i>		$\text{€}0.00$
<i>Net income tax liability</i>		<hr/>
		$\text{€}0.00$

Since his cumulative pay never exceeds his cumulative SRCOP in any week, his gross tax is only chargeable at the standard rate of 20%.

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Solution to Example 2

Adam Kelly	Annual Tax Credits	€ 3,550
	Weekly Tax Credits	€ 68.27
	Annual SRCOP	€ 40,000
	Weekly SRCOP	€ 769.24

A	B	C	D	E	F	G	H	I	J	K	L	M
Week No.	Pay for EE PRSI this period	Taxable Pay this period	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative amount taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative Tax due (cannot be less than 0)	Tax deducted this period	Tax refunded this period
1	350.00	350.00	350.00	769.24	-	70.00	-	70.00	68.27	1.73	1.73	-
2	350.00	350.00	700.00	1,538.48	-	140.00	-	140.00	136.54	3.46	1.73	-
3	350.00	350.00	1,050.00	2,307.72	-	210.00	-	210.00	204.81	5.19	1.73	-
4	375.00	375.00	1,425.00	3,076.96	-	285.00	-	285.00	273.08	11.92	6.73	-
5	375.00	375.00	1,800.00	3,846.20	-	360.00	-	360.00	341.35	18.65	6.73	-
6	350.00	350.00	2,150.00	4,615.44	-	430.00	-	430.00	409.62	20.38	1.73	-
7	-	-	2,150.00	5,384.68	-	430.00	-	430.00	477.89	-	-	20.38
8	350.00	350.00	2,500.00	6,153.92	-	500.00	-	500.00	546.16	-	-	-
9				6,923.16					614.43			
10				7,692.40					682.70			

Calculation of Income Tax under the PAYE System

2.1 Payments in excess of the Standard Rate Cut-Off Point (SRCOP)

Where an employee receives a payment in excess of his SRCOP, he will be liable to pay Income tax at the standard rate of 20% on an amount of his income up to the SRCOP. Any income in excess of the SRCOP will be liable to Income tax at the higher rate of 40%.

Example 3

John Murphy earns €850 per week. His tax credits and SRCOP are €3,550 and €40,000 respectively. Calculate his weekly tax liability for weeks 1 to 4.

Solution 3

See the TDC for John Murphy on the following pages, which outline how his tax is calculated in each week.

In Week 1, his Income tax liability is calculated as follows

<i>Pay for current week</i>		<i>€ 850.00</i>
<i>SRCOP</i>	<i>€ 40,000.00 / 52 weeks =</i>	<i>€ 769.24</i>
<i>Gross tax at standard rate</i>	<i>€ 769.24 @ 20% =</i>	<i>€ 153.85</i>
<i>Gross tax at high rate</i>	<i>€ 80.76 @ 40% =</i>	<i>€ 32.30</i>
		<i>€ 186.15</i>
<i>Less tax credits</i>	<i>€ 3,550.00 / 52 weeks =</i>	<i>€ 68.27</i>
<i>Net income tax liability</i>		<i>€ 117.88</i>

In Week 2, his Income tax liability is calculated as follows

<i>Cumulative pay</i>		<i>€ 1,700.00</i>
<i>Cumulative SRCOP</i>	<i>€ 40,000.00 / 52 x 2 weeks =</i>	<i>€ 1,538.48</i>
<i>Gross tax at standard rate</i>	<i>€ 1,538.48 @ 20% =</i>	<i>€ 307.70</i>
<i>Gross tax at higher rate</i>	<i>€ 161.52 @ 40% =</i>	<i>€ 64.61</i>
		<i>€ 372.30</i>
<i>Less: cumulative tax credits</i>	<i>€ 3,550.00 / 52 x 2 weeks =</i>	<i>€ 136.54</i>
<i>Cumulative liability</i>		<i>€ 235.76</i>
<i>Less: cumulative tax liability to date</i>		<i>(€117.88)</i>
<i>Net income tax liability</i>		<i>€ 117.88</i>

As he earns the same salary each week, his tax liability is €117.88 in each of these 4 weeks.

Note: The tax liability may change by a cent or two on a weekly basis due to rounding.

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Solution to Example 3

John Murphy	Annual Tax Credits	€ 3,550
	Weekly Tax Credits	€ 68.27
	Annual SRCOP	€ 40,000
	Weekly SRCOP	€ 769.24

A	B	C	D	E	F	G	H	I	J	K	L	M
Week No.	Pay for EE PRSI this period	Taxable Pay this period	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative amount taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative Tax due (cannot be less than 0)	Tax deducted this period	Tax refunded this period
1	850.00	850.00	850.00	769.24	80.76	153.85	32.30	186.15	68.27	117.88	117.88	-
2	850.00	850.00	1,700.00	1,538.48	161.52	307.70	64.61	372.30	136.54	235.76	117.88	-
3	850.00	850.00	2,550.00	2,307.72	242.28	461.54	96.91	558.46	204.81	353.65	117.88	-
4	850.00	850.00	3,400.00	3,076.96	323.04	615.39	129.22	744.61	273.08	471.53	117.88	-
5				3,846.20					341.35			
6				4,615.44					409.62			
7				5,384.68					477.89			
8				6,153.92					546.16			
9				6,923.16					614.43			
10				7,692.40					682.70			

Calculation of Income Tax under the PAYE System

Example 4

Continuing from Example 3 above, John Murphy earns €850 in weeks 5, 6 and 8 and he takes week 7 off without pay. Calculate his weekly tax liability for weeks 5 to 8 inclusive.

Solution 4

See the following TDC for John Murphy, which outlines how his tax is calculated in each week.

In Week 5, his Income tax liability is calculated as follows

Cumulative pay	€850 x 5	€ 4,250.00
Cumulative SRCOP	€ 40,000.00 / 52 x 5 weeks =	€ 3,846.20
Gross tax at standard rate	€ 3,846.20 @ 20% =	€ 769.24
Gross tax at higher rate	€ 403.80 @ 40% =	<u>€ 161.52</u>
		€ 930.76
Less: cumulative tax credits	€ 3,550.00 / 52 x 5 weeks =	<u>€ 341.35</u>
Cumulative liability		€ 589.41
Less: cumulative tax liability to date		<u>(€471.53)</u>
Net income tax liability		€ 117.88

In Week 6, his Income tax liability is calculated as follows

Cumulative pay	€850 x 6	€ 5,100.00
Cumulative SRCOP	€ 40,000.00 / 52 x 6 weeks =	€ 4,615.44
Gross tax at standard rate	€ 4,615.44 @ 20% =	€ 923.09
Gross tax at higher rate	€ 484.56 @ 40% =	<u>€ 193.82</u>
		€ 1,116.91
Less: cumulative tax credits	€ 3,550.00 / 52 x 6 weeks =	<u>€ 409.62</u>
Cumulative liability		€ 707.29
Less: cumulative tax liability to date		<u>(€589.41)</u>
Net income tax liability		€ 117.88

In Week 7, John does not have any income, but due to the way in which the Cumulative Basis works, he now receives a refund of tax.

In Week 7, his Income tax liability is calculated as follows

Cumulative pay	€850 x 6	€ 5,100.00
Cumulative SRCOP	€ 40,000.00 / 52 x 7 weeks =	€ 5,384.68
Gross tax at standard rate	€ 5,100.00 @ 20% =	€ 1,020.00
Gross tax at higher rate	€ 0.00 @ 40% =	<u>€ 0.00</u>
		€ 1,020.00
Less: cumulative tax credits	€ 3,550.00 / 52 x 7 weeks =	<u>€ 477.89</u>
Cumulative liability		€ 542.11
Less: cumulative tax liability to date		<u>(€707.29)</u>
Tax refund this week		(€165.18)

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The refund of €165.18 is the difference between the cumulative tax liability for week 6 and the cumulative tax liability for week 7. This refund comprises of an amount of tax equal to his weekly tax credit of €68.27 plus a reduction in the amount of the cumulative gross pay (€769.24) liable at the higher rate of tax in week 6, which is now liable at the standard rate of tax in week 7. The reduction in the cumulative gross tax payable at the higher rate occurs because the gross pay remains at €5,100 and his SRCOP has increased by €769.24 from week 6 to week 7. This reduces his cumulative gross income tax liability by €96.91 i.e. from €1,116.91 in week 6 to €1,020 in week 7. The total refund is equal to €165.18 (€68.27 + €96.91).

In Week 8, his Income tax liability is calculated as follows

Cumulative pay	€850 x 7	€ 5,950.00
Cumulative SRCOP	€ 40,000.00 / 52 x 8 weeks =	€ 6,153.92
Gross tax at standard rate	€ 5,950.00 @ 20% =	€ 1,190.00
Gross tax at higher rate	€ 0.00 @ 40% =	€ 0.00
		€ 1,190.00
Less: cumulative tax credits	€ 3,550.00 / 52 x 8 weeks =	€ 546.16
Cumulative liability		€ 643.84
Less: cumulative tax liability to date		(€542.11)
Net income tax liability		€ 101.73

The weekly liability may change by a cent each week, or the weekly liability may appear to be 1 cent different on the TDC which arises due to rounding of the calculations.

Calculation of Income Tax under the PAYE System

Solution to Example 4

John Murphy	Annual Tax Credits		€ 3,550
	Weekly Tax Credits		€ 68.27
	Annual SRCOP		€ 40,000
	Weekly SRCOP		€ 769.24

A	B	C	D	E	F	G	H	I	J	K	L	M
Week No.	Pay for EE PRSI this period	Taxable Pay this period	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative amount taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative Tax due (cannot be less than 0)	Tax deducted this period	Tax refunded this period
1	850.00	850.00	850.00	769.24	80.76	153.85	32.30	186.15	68.27	117.88	117.88	-
2	850.00	850.00	1,700.00	1,538.48	161.52	307.70	64.61	372.30	136.54	235.76	117.88	-
3	850.00	850.00	2,550.00	2,307.72	242.28	461.54	96.91	558.46	204.81	353.65	117.88	-
4	850.00	850.00	3,400.00	3,076.96	323.04	615.39	129.22	744.61	273.08	471.53	117.88	-
5	850.00	850.00	4,250.00	3,846.20	403.80	769.24	161.52	930.76	341.35	589.41	117.88	-
6	850.00	850.00	5,100.00	4,615.44	484.56	923.09	193.82	1,116.91	409.62	707.29	117.88	-
7	-	-	5,100.00	5,384.68	-	1,020.00	-	1,020.00	477.89	542.11	-	165.18
8	850.00	850.00	5,950.00	6,153.92	-	1,190.00	-	1,190.00	546.16	643.84	101.73	-
9				6,923.16					614.43			
10				7,692.40					682.70			

CHAPTER 6

3. New Employee

When an employee commences a new employment, the employee should provide the employer with his PPS Number (PPSN). The employer must take reasonable measures to ensure that the PPSN provided refers to that employee. The employer will be regarded as having taken reasonable measures where he checks the PPSN provided against any of the following:

- The PPSN Checker on ROS
- A Public Services Card, or PPS Registration Letter issued by the DSP
- A Social Services Card, Medical Card, Drugs Payment Scheme Card
- GP Visit Card, European Health Insurance Card
- A notice of assessment to Income Tax, or Capital Gains Tax
- A P21 Balancing Statement
- Any other item of correspondence from the tax office, which quotes the PPSN
- A payslip from a previous employer which shows the PPSN

The new employer can register the employment by requesting an RPN for the employee containing his start date. Where the former employer included a leave date on the final Payroll Submission for that employee, this will enable Revenue to transfer the employee's tax credits and SRCOP to the new employer which will be reflected in the RPN issued to the new employer. Where the RPN is issued on the Cumulative Basis, it will also include the employees cumulative pay and tax from any previous employment in the current tax year.

Where Revenue is unsure of an employee's previous earnings or where the employee continues to hold another employment, the RPN will generally issue on the Week 1 Basis with no tax credits, SRCOP or USC Cut-Off-Points.

Employees can register a new employment online using the Jobs and Pension service, which is available through myAccount, however they are not compelled to do so, unless it is the individual's first employment in Ireland.

If it is the employee's **first employment** in Ireland, he **must** register the employment online using the Jobs and Pensions service in order to be registered for PAYE. Once registered his employer will then receive an RPN for the employee. Where an RPN request is made by the employer prior to the employee registering his first employment on the Jobs and Pension service, a "No RPN found" message will be returned to the employer. The Emergency Basis of tax should be used where no RPN has been found and the employer should advise the employee to contact Revenue. The rules for operating the Emergency Basis are explained later. Once an RPN is made available by Revenue to the new employer, Income Tax should then be operated in accordance with the details shown on that RPN.

Registering an employment is dealt with in more detail in the Chapter entitled "**The PAYE System**".

If the employer has not received a PPSN for the employee, he should operate the Emergency Basis of tax and advise the employee to contact Revenue.

Calculation of Income Tax under the PAYE System

An employee can also cease a previous employment in myAccount by entering a leave date in respect of that employment. An employee may consider doing this where a former employer has not yet submitted the leave date in a Payroll Submission to Revenue.

4. First Employment in a Tax Year

Where an employee commences his first employment in a tax year, Revenue may issue a cumulative RPN where they are satisfied that the individual has no income from a previous employment or self-employment in the current tax year, or any outstanding tax liabilities from a previous tax year (e.g. a student who commences employment mid-year).

Under the Cumulative Basis, a person who commences work for the first time in July will have at least 26 weeks' worth of tax credits available for use before he begins to pay tax on his income. You can see how in that instance it might be a number of months before the gross tax on his cumulative earnings from the beginning of the current tax year exceeds his cumulative tax credits. Only then will he begin to pay income tax.

By the same token, a person who commences employment for the first time on the 1st January may have to pay income tax on his first payday, depending on his level of earnings, since he will have no unused cumulative tax credits. A person who commences work for the first time in February and receives his first payment in week 6 will have 6 weeks cumulative tax credits and SRCOP available for use in the week in which he is first paid. It may then be a number of weeks before he begins to pay tax on his income.

Unused tax credits cannot be transferred from one tax year to the next. They also cannot be transferred from one person to another. However, tax credits may be transferred between a couple (married or civil partners), except for the PAYE tax credit and the Earned Income tax credit, within the same income tax year.

The point at which a person who commences work for the first time begins to pay income tax depends on:

- When in the tax year he commences employment?
- What is the level of his weekly earnings?
- What is the level of his weekly tax credits? and
- What is the level of his weekly SRCOP?

Since these 4 points can vary from person to person, there is no average figure, which applies to everyone. Instead everybody's situation is dependent on his or her own personal circumstances.

Example 5

Brian commenced work in February. He earns €700 per week and his first wages payment is received in week 6. Revenue is satisfied that Brian had no income for the first 5 weeks of the year and issued a cumulative RPN which contains a tax credit and SRCOP of €3,550 and €40,000.

Brian does not pay tax for the first 4 weeks of his employment as his cumulative tax credits exceed his cumulative gross tax, and it is the 5th week (Week 10) of his employment before the cumulative gross tax exceeds his cumulative tax credits, resulting in Brian paying Income tax for the first time this year.

CHAPTER 6

Solution 5

In Week 6, his Income tax liability is calculated as follows

Cumulative pay		€ 700.00
Cumulative SRCOP	€ 40,000.00 / 52 x 6 weeks =	€ 4,615.44
Gross tax at standard rate	€ 700.00 @ 20% =	€ 140.00
Gross tax at higher rate	€ 0.00 @ 40% =	€ 0.00
		€ 140.00
Less: cumulative tax credits	€ 3,550.00 / 52 x 6 weeks =	€ 409.62
Cumulative liability		€ 0.00
Less: cumulative tax liability to date		€ 0.00
Net income tax liability		€ 0.00

Note: when a person's cumulative tax credits exceed his cumulative gross tax, no tax is payable and since he had not paid any income tax to date, there is no refund due. Tax credits can only be used to reduce the amount of gross tax. Unused tax credits cannot be refunded. Tax can only be refunded where it has been paid in the first instance.

In Week 10, his Income tax liability is calculated as follows

Cumulative pay	€700 x 5	€ 3,500.00
Cumulative SRCOP	€ 40,000.00 / 52 x 10 weeks =	€ 7,692.40
Gross tax at standard rate	€ 3,500.00 @ 20% =	€ 700.00
Gross tax at higher rate	€ 0.00 @ 40% =	€ 0.00
		€ 700.00
Less: cumulative tax credits	€ 3,550.00 / 52 x 10 weeks =	€ 682.70
Cumulative liability		€ 17.30
Less: cumulative tax liability to date		€ 0.00
Net income tax liability		€ 17.30

Brian's cumulative gross tax is greater than his cumulative tax credits and he must now pay income tax for the first time this year.

In Week 11, his Income tax liability is calculated as follows

Cumulative pay	€700 x 6	€ 4,200.00
Cumulative SRCOP	€ 40,000.00 / 52 x 11 weeks =	€ 8,461.64
Gross tax at standard rate	€ 4,200.00 @ 20% =	€ 840.00
Gross tax at higher rate	€ 0.00 @ 40% =	€ 0.00
		€ 840.00
Less: cumulative tax credits	€ 3,550.00 / 52 x 11 weeks =	€ 750.97
Cumulative liability		€ 89.03
Less: cumulative tax liability to date		(€17.30)
Tax refund this week		€71.73

Every week thereafter, the Income tax liability will be €71.73 based on earnings of €700 per week.

Where Revenue issue the RPN on a Week 1 Basis, or the employee is subject to the Emergency Basis of tax, it is likely that the employee will begin to pay tax from the first pay period assuming his gross tax liability exceeds the level of his tax credits.

Calculation of Income Tax under the PAYE System

Solution to Example 5

Brian Byrne	Annual Tax Credits	€ 3,550
	Weekly Tax Credits	€ 68.27
	Annual SRCOP	€ 40,000
	Weekly SRCOP	€ 769.24

A	B	C	D	E	F	G	H	I	J	K	L	M
Week No.	Pay for EE PRSI this period	Taxable Pay this period	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative amount taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative Tax due (cannot be less than 0)	Tax deducted this period	Tax refunded this period
1	-	-		769.24	-	-	-	-	68.27	-	-	-
2	-	-		1,538.48	-	-	-	-	136.54	-	-	-
3	-	-		2,307.72	-	-	-	-	204.81	-	-	-
4	-	-		3,076.96	-	-	-	-	273.08	-	-	-
5	-	-		3,846.20	-	-	-	-	341.35	-	-	-
6	700.00	700.00	700.00	4,615.44	-	140.00	-	140.00	409.62	-	-	-
7	700.00	700.00	1,400.00	5,384.68	-	280.00	-	280.00	477.89	-	-	-
8	700.00	700.00	2,100.00	6,153.92	-	420.00	-	420.00	546.16	-	-	-
9	700.00	700.00	2,800.00	6,923.16	-	560.00	-	560.00	614.43	-	-	-
10	700.00	700.00	3,500.00	7,692.40	-	700.00	-	700.00	682.70	17.30	17.30	-
11	700.00	700.00	4,200.00	8,461.64	-	840.00	-	840.00	750.97	89.03	71.73	-
12	700.00	700.00	4,900.00	9,230.88	-	980.00	-	980.00	819.24	160.76	71.73	-
13	700.00	700.00	5,600.00	10,000.12	-	1,120.00	-	1,120.00	887.51	232.49	71.73	-
14	700.00	700.00	6,300.00	10,769.36	-	1,260.00	-	1,260.00	955.78	304.22	71.73	-

CHAPTER 6

5. Emergency Basis

An employer is obliged to operate the Emergency Basis of tax where:

- The employer has not received a PPSN from a new employee, or
- The employer holds the employee's PPSN and requested an RPN, but no RPN is available as the employee has not yet registered for PAYE with Revenue.

An employee is required to register his first employment in Ireland online using the Jobs and Pension service in myAccount.

Different rules apply for the Emergency Basis of tax depending on whether or not the employee provides the employer with his PPSN. The following outlines the tax credits and SRCOP applicable **(a)** where the employee provides his employer with his PPSN and **(b)** where he does not.

(a) Where employee provides employer with his PPSN

Weeks 1 to 4 on the commencement of a new employment

For the first 4 weeks an employee is paid commencing with the first pay date (2 fortnights or 1 month), gross tax is calculated on taxable pay at the standard rate of tax up to an amount equal to 1/52nd of the SRCOP for a single person if weekly paid (1/26th if fortnightly paid or 1/12th if monthly paid). Revenue round the Emergency SRCOP to whole euros. For example, €40,000 / 52 = €770; €40,000 / 26 = €1,539 and €40,000 / 12 = €3,334. Any balance of pay is taxed at the higher rate. A tax credit is not available under the Emergency Basis.

Subsequent weeks or months

For each subsequent week or month, tax is chargeable at the higher rate of 40% on all earnings. No SRCOP or tax credit applies.

Summary of Emergency Basis where a PPSN is provided:

Pay Frequency		SRCP	Tax Credit
Weekly Paid	Weeks 1 - 4	€770	€0
	Weeks 5 onwards	€0	€0
Fortnightly Paid	Fortnights 1 - 2	€1,539	€0
	Fortnight 3 onwards	€0	€0
Monthly Paid	Month 1	€3,334	€0
	Month 2 onwards	€0	€0

(b) Where employee does not provide employer with his PPSN

Employers are obliged to deduct tax at the higher rate from employees who do not have or have not provided their PPSN (i.e. the employee does not receive a SRCOP or tax credit).

Summary:

Each week, fortnight or month	SRCP	Tax Credit
All taxable @ 40%	Nil	Nil

Calculation of Income Tax under the PAYE System

If an employer has been operating the Emergency Basis for a period and the employee has not produced a PPSN, the employee will not receive the benefit of the Emergency SRCOP for that period. If an employee, commencing his first employment in Ireland, produces his PPSN after say 2 weeks, but has still not registered for PAYE using the Jobs and Pension service, the employer must transfer him onto the Emergency Basis with a PPSN from week 3 onwards until such time as an RPN is provided. This will generally happen automatically once the employer records the employee's PPSN in the payroll software. However, the tax deducted for the first 2 weeks must not be recalculated. Instead each week must be treated separately.

For the purpose of operating the Emergency Basis, all periods of employment held with the same employer are deemed to be a single employment, and for Emergency tax purposes, that employment is deemed to have commenced on the date that the employee was first paid. For example, an employee who commenced work in week 5, worked for 6 weeks, left the employment in Week 10, and recommenced employment in week 30. Assuming the Emergency Basis applies in week 30 on the employee's recommencement, it should be treated as the 26th week of employment for the purposes of calculating the Emergency tax (i.e. as it is the 26th week of Emergency tax the employee is not entitled to any Emergency SRCOP regardless of whether he provides his PPSN to his employer). This treatment applies whether the employee recommences in the same tax year or a subsequent tax year.

Note: If an employer receives a PPSN from a new employee, the employer should request an RPN for that employee. Emergency tax should only be used where no RPN is available.

5.1 Subsequent issue of an RPN

If an employer operates the Emergency Basis and then subsequently receives an RPN for that employee, the employer is obliged to apply the RPN with immediate effect. The RPN will issue either on the Cumulative or Week 1 Basis. Where the RPN is issued on a Cumulative Basis, this usually (but not always) results in a refund of income tax for the employee. A refund will not arise where the RPN is issued on a Week 1 Basis.

Example 6

Tom Dunne commenced his first employment in Ireland with Multi Co in week 1 and earns €800 per week. Tom obtained his PPSN from the DSP and provided it to Multi Co but he did not register his employment on the Jobs and Pension service until week 6 at which point a cumulative RPN was made available to Multi Co. Tom was taxed on the Emergency Basis for the first 5 weeks of his employment. The RPN contained a tax credit of €3,550 and SRCOP of €40,000. As this is his first employment, the RPN did not contain any previous pay or tax. Calculate Tom's Income tax liability for weeks 1 to 7.

CHAPTER 6

Solution to Example 6

Tom Dunne

Emergency Tax Deduction Card

A	B	C	D	E	F	G	H	I	J	K
Week No.	Pay for EE PRSI this period	Taxable Pay this period	Cumulative Taxable Pay	Emergency SRCOP	Amount taxable at higher rate	Tax due at Standard Rate	Tax due at Higher Rate	Gross tax	Emergency Tax Credit	Tax due (cannot be less than 0)
1	800.00	800.00	800.00	770.00	30.00	154.00	12.00	166.00	-	166.00
2	800.00	800.00	1,600.00	770.00	30.00	154.00	12.00	166.00	-	166.00
3	800.00	800.00	2,400.00	770.00	30.00	154.00	12.00	166.00	-	166.00
4	800.00	800.00	3,200.00	770.00	30.00	154.00	12.00	166.00	-	166.00
5	800.00	800.00	4,000.00	-	800.00	-	320.00	320.00	-	320.00

4,000.00

Figures to be transferred to Cumulative TDC

984.00

Solution to Example 6

Tom Dunne	Annual Tax Credits	€ 3,550
	Weekly Tax Credits	€ 68.27
	Annual SRCOP	€ 40,000
Cumulative Tax Deduction Card	Weekly SRCOP	€ 769.24

A	B	C	D	E	F	G	H	I	J	K	L	M
Week No.	Pay for EE PRSI this period	Taxable Pay this period	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative amount taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative Tax due (cannot be less than 0)	Tax deducted this period	Tax refunded this period
1	Figure transferred from Emergency TDC. This figure will not appear on the RPN as it is from the current employment			769.24					68.27			
2				1,538.48					136.54			
3				2,307.72					204.81			
4				3,076.96					273.08			
5			4,000.00	3,846.20					341.35	984.00		
6	800.00	800.00	4,800.00	4,615.44	184.56	923.09	73.82	996.91	409.62	587.29	-	396.71
7	800.00	800.00	5,600.00	5,384.68	215.32	1,076.94	86.13	1,163.06	477.89	685.17	97.88	-
8				6,153.92					546.16			
9				6,923.16					614.43			
10				7,692.40					682.70			
11				8,461.64					750.97			
12				9,230.88					819.24			
13				10,000.12					887.51			
14				10,769.36					955.78			
15				11,538.60					1,024.05			
16				12,307.84					1,092.32			

CHAPTER 6

Example 7

Joe Lake commenced employment with your company in week 6 and earns €720 per week. This is his first employment in Ireland. Joe has forgotten his PPSN, but he assures you that he will get it to you as soon as he can. As it is company policy to pay employees at the end of each week, Joe must be included in the payroll for week 6. In week 8, Joe gives you a Public Services Card which shows his PPSN. Joe registered his employment online via the Jobs and Pensions service in week 11 and a cumulative RPN was immediately made available by Revenue. The RPN contained a tax credit of €3,550 and SRCOP of €40,000. Calculate his Income tax liability for weeks 6 to 12 inclusive.

Solution 7

The Emergency Basis (with no PPSN) must be applied in week 6 and week 7, as Joe has not produced his PPSN and therefore all of his income is chargeable to tax at the higher rate.

Week 6 and Week 7

Gross pay	€720.00
Emergency tax	€720 @ 40%
No tax credits due	€288.00

As Joe has now produced his PPSN, but still has not registered his employment online via the Jobs and Pensions service (hence no RPN can be retrieved for him), the employer should record his PPSN and apply the Emergency Basis with a PPSN from the third week in which he is paid, which is week 8, until such time as an RPN is received. However, the tax deducted for the first two weeks must not be recalculated at this point. Instead each week must be treated separately.

Week 8

Gross pay	€ 720.00
Emergency SRCOP	€ 770.00
Emergency Basis with a PPSN (third week)	

Gross tax at standard rate	€ 720.00 @ 20% =	€ 144.00
Gross tax at higher rate	€ 0.00 @ 40% =	€ 0.00
		€ 144.00
Less: tax credits		€ 0.00
Tax liability this week		€ 144.00

Week 9

Gross pay	€ 720.00
Emergency SRCOP	€ 770.00
Emergency Basis with a PPSN (fourth week)	

Gross tax at standard rate	€ 720.00 @ 20% =	€ 144.00
Gross tax at higher rate	€ 0.00 @ 40% =	€ 0.00
		€ 144.00
Less: tax credits		€ 0.00
Tax liability this week		€ 144.00

Calculation of Income Tax under the PAYE System

Week 10

Gross pay	€ 720.00
Emergency SRCOP	€ 0.00
Emergency Basis with a PPSN (fifth week)	
Gross tax at standard rate	€ 0.00 @ 20% =
Gross tax at higher rate	€ 720.00 @ 40% =
	<u>€ 288.00</u>
Less: tax credits	<u>€ 0.00</u>
Tax liability this week	<u>€ 288.00</u>

Joe is not entitled to an Emergency SRCOP in Week 10 as he is now in the fifth week of the Emergency Basis. When Revenue subsequently issue a cumulative RPN, his Income tax liability will have to be recalculated and he may be due a refund at that stage.

In Week 11, his Income tax liability is calculated as follows

Cumulative pay	€720 x 6 weeks	€ 4,320.00
Cumulative SRCOP	€ 40,000.00 / 52 x 11 weeks =	€ 8,461.64
Gross tax at standard rate	€ 4,320.00 @ 20% =	€ 864.00
Gross tax at higher rate	€ 0.00 @ 40% =	<u>€ 0.00</u>
	<u>€ 864.00</u>	
Less: cumulative tax credits	€ 3,550.00 / 52 x 11 weeks =	<u>€ 750.97</u>
Cumulative liability		<u>€ 113.03</u>
Less: cumulative tax liability to date		<u>(€1,152.00)</u>
Tax refund due this week		<u>(€1,038.97)</u>

In Week 12, his Income tax liability is calculated as follows

Cumulative pay	€720 x 7 weeks	€ 5,040.00
Cumulative SRCOP	€ 40,000.00 / 52 x 12 weeks =	€ 9,230.88
Gross tax at standard rate	€ 5,040.00 @ 20% =	€ 1,008.00
Gross tax at higher rate	€ 0.00 @ 40% =	<u>€ 0.00</u>
	<u>€ 1,008.00</u>	
Less: cumulative tax credits	€ 3,550.00 / 52 x 12 weeks =	<u>€ 819.24</u>
Cumulative liability		<u>€ 188.76</u>
Less: cumulative tax liability to date		<u>(€113.03)</u>
Tax liability due this week		<u>€75.73</u>

CHAPTER 6

Solution to Example 7

Joe Lake

Emergency Tax Deduction Card

A	B	C	D	E	F	G	H	I	J	K
Week No.	Pay for EE PRSI this period	Taxable Pay this period	Cumulative Taxable Pay	Emergency SRCOP	Amount taxable at higher rate	Tax due at Standard Rate	Tax due at Higher Rate	Gross tax	Emergency Tax Credit	Tax due (cannot be less than 0)
1										
2										
3										
4										
5										
6	720.00	720.00	720.00	-	720.00	-	288.00	288.00	-	288.00
7	720.00	720.00	1,440.00	-	720.00	-	288.00	288.00	-	288.00
8	720.00	720.00	2,160.00	770.00	-	144.00	-	144.00	-	144.00
9	720.00	720.00	2,880.00	770.00	-	144.00	-	144.00	-	144.00
10	720.00	720.00	3,600.00	-	720.00	-	288.00	288.00	-	288.00
11										

3,600.00

Figures to be transferred to Cumulative TDC

1,152.00

Calculation of Income Tax under the PAYE System

Solution to Example 7

Joe Lake	Annual Tax Credits	€ 3,550
	Weekly Tax Credits	€ 68.27
	Annual SRCOP	€ 40,000
Cumulative Tax Deduction Card	Weekly SRCOP	€ 769.24

A	B	C	D	E	F	G	H	I	J	K	L	M
Week No.	Pay for EE PRSI this period	Taxable Pay this period	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative amount taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative Tax due (cannot be less than 0)	Tax deducted this period	Tax refunded this period
1				769.24					68.27			
2				1,538.48					136.54			
3				2,307.72					204.81			
4				3,076.96					273.08			
5	Figure transferred from Emergency TDC. This figure will not appear on the RPN as it is from the current employment			3,846.20					341.35	Figure transferred from Emergency TDC. This figure will not appear on the RPN as it		
6				4,615.44					409.62			
7				5,384.68					477.89			
8				6,153.92					546.16			
9				6,923.16					614.43			
10			3,600.00	7,692.40					682.70	1,152.00		
11	720.00	720.00	4,320.00	8,461.64	-	864.00	-	864.00	750.97	113.03	-	1,038.97
12	720.00	720.00	5,040.00	9,230.88	-	1,008.00	-	1,008.00	819.24	188.76	75.73	-
13				10,000.12					887.51			
14				10,769.36					955.78			
15				11,538.60					1,024.05			
16				12,307.84					1,092.32			

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6. Week 1 / Month 1 (Non-Cumulative) Basis

In certain circumstances Revenue will issue an RPN on a Week 1 or Month 1 Basis in respect of an employee. This can occur in many different circumstances, such as the following:

- Where an individual takes up employment after a period of being self-employed in the same tax year, or
- Where the employee's earnings for the period prior to taking up his new employment are unclear (e.g. where the individual was in receipt of a taxable payment from the DSP), or
- Where the employee's previous employer did not record a leave date for the employee in the final Payroll Submission for that employee, or
- Where the employee's tax credits have been reduced and applying the Cumulative Basis would result in an unacceptably large underpayment being collected in one pay period, or
- Where the employee is in receipt of certain taxable benefits from the DSP such as Illness Benefit, Maternity Benefit, Paternity Benefit or Adoptive Benefit.

The Week 1 or Month 1 Basis is the direct opposite of the Cumulative Basis, which means that the pay, tax credits and the SRCOP are not accumulated for tax purposes. The pay for each pay period (i.e. week or month) is dealt with in isolation and no account is taken of pay, tax credits, SRCOP and tax deducted in previous weeks, or months. The tax credits and SRCOP on a Week 1/Month 1 Basis are used in the calculation of tax due each week, or each month in which a payment is made.

No refunds of Income tax may be made by the employer, to an employee who is being taxed on a Week 1 Basis.

Where an employer holds a cumulative RPN and subsequently receives a Week 1 RPN, the Week 1 RPN takes effect from the first payday after the date of receipt.

Where an employer holds a Week 1 RPN and subsequently receives a cumulative RPN, the cumulative RPN takes effect from the first payday after the date of receipt. This means that the tax liability for the tax year to date must be recalculated in that pay period.

Example 8

James Freeman commenced a new job in Week 16 earning €500 per week. This is his first employment in the current year. As Revenue are unsure as to the amount of any taxable income (e.g. Jobseeker's Benefit) James may have received in the first 15 weeks of the tax year, they issued a Week 1 RPN with a tax credit and SRCOP of €3,550 and €40,000 respectively.

His new employer operated the Week 1 Basis for 4 weeks (weeks 16 – 19). Revenue issued a cumulative RPN with a tax credit and SRCOP of €3,550 and €40,000 respectively which was applied in week 20. The RPN did not contain any previous pay or tax.

Calculate his Income tax liability from Week 16 to week 22.

Solution 8

In Weeks 16 to 19 inclusive, his Income tax liability was calculated on the Week 1 Basis, where the liability in each week is calculated in isolation, regardless of the earnings in previous weeks.

Calculation of Income Tax under the PAYE System

In Weeks 16 to 19, his Income tax liability is calculated as follows

Gross pay per week		€ 500.00
SRCOP	€ 40,000.00 / 52 weeks =	€ 769.24
Gross tax at standard rate	€ 500.00 @ 20% =	€ 100.00
Gross tax at high rate	€ 0.00 @ 40% =	€ 0.00
		€ 100.00
Less tax credits	€ 3,550.00 / 52 weeks =	€ 68.27
Net income tax liability		€ 31.73

The pay and tax deducted for each week was €500 and €31.73 respectively, which amounts to earnings of €2,000 and tax of €126.92 for the 4 weeks. When the cumulative RPN is received by his employer, his tax liability is then recalculated on the Cumulative Basis in week 20. James will then get a tax refund in week 20, calculated as follows:

Total gross pay to date (up to Week 19)	€2,000.00
Total tax paid to date (up to Week 19)	€126.92

Week 20 Cumulative Basis applied

In Week 20, his Income tax liability is calculated as follows

Cumulative pay	€2000 + €500	€ 2,500.00
Cumulative SRCOP	€ 40,000.00 / 52 x 20 weeks =	€ 15,384.80
Gross tax at standard rate	€ 2,500.00 @ 20% =	€ 500.00
Gross tax at higher rate	€ 0.00 @ 40% =	€ 0.00
		€ 500.00
Less: cumulative tax credits	€ 3,550.00 / 52 x 20 weeks =	€ 1,365.40
Cumulative liability		€ 0.00
Less: cumulative tax liability to date		(€126.92)
Tax refund this week		(€126.92)

The Cumulative Basis continues to apply in weeks 21 and 22

See extracts from Week 1 TDC and Cumulative TDC as follows:

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Solution to Example 8

James Freeman

Week 1 Tax Deduction Card

A	B	C	D	E	F	G	H	I	J	K
Week No.	Pay for EE PRSI this period	Taxable Pay this period	Cumulative Taxable Pay	Weekly SRCOP	Amount taxable at higher rate	Tax due at Standard Rate	Tax due at Higher Rate	Gross tax	Weekly Tax Credit	Tax due (cannot be less than 0)
14										
15										
16	500.00	500.00	500.00	769.24	-	100.00	-	100.00	68.27	31.73
17	500.00	500.00	1,000.00	769.24	-	100.00	-	100.00	68.27	31.73
18	500.00	500.00	1,500.00	769.24	-	100.00	-	100.00	68.27	31.73
19	500.00	500.00	2,000.00	769.24	-	100.00	-	100.00	68.27	31.73
20										
21										

2,000.00

Figures to be transferred to Cumulative TDC

126.92

Solution to Example 8

James Freeman

Annual Tax Credits	€ 3,550
Weekly Tax Credits	€ 68.27
Annual SRCOP	€ 40,000
Weekly SRCOP	€ 769.24

Cumulative Tax Deduction Card

A	B	C	D	E	F	G	H	I	J	K	L	M
Week No.	Pay for EE PRSI this period	Taxable Pay this period	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative amount taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative Tax due (cannot be less than 0)	Tax deducted this period	Tax refunded this period
14				10,769.36					955.78			
15				11,538.60					1,024.05			
16				12,307.84					1,092.32			
17				13,077.08					1,160.59			
18				13,846.32					1,228.86			
19			2,000.00	14,615.56					1,297.13	126.92		
20	500.00	500.00	2,500.00	15,384.80	-	500.00	-	500.00	1,365.40	-	-	126.92
21	500.00	500.00	3,000.00	16,154.04	-	600.00	-	600.00	1,433.67	-	-	-
22	500.00	500.00	3,500.00	16,923.28	-	700.00	-	700.00	1,501.94	-	-	-
23				17,692.52					1,570.21			
24				18,461.76					1,638.48			
25				19,231.00					1,706.75			
26				20,000.24					1,775.02			

Figure transferred from Week 1 TDC

Figure transferred from Week 1 TDC

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7. Week 53

There are 52 weeks and 1 day in a normal 365 day year. This means that in certain circumstances 53 weekly paydays can arise in a tax year, i.e. where the first day and the last day of the tax year (last day or second last day in a leap year) are normal paydays for a weekly paid employee. In that case, an individual's annual tax credits and SRCOP will have been utilised in full after 52 paydays. As a result, if no concession was made, for many employees the payment made in the 53rd weekly payday would be taxable in full, as the employee would have exhausted his annual tax credits and SRCOP for the year.

Revenue provides a concession, whereby an extra week's tax credits and SRCOP are granted in the 53rd payday of the year, equivalent to a normal week's tax credits and SRCOP for the year, but on a Week 1 Basis. This means that the Income tax deduction in the 53rd payday in the year is a normal week's deduction.

The same principle applies in the 27th fortnightly pay period of the year where the employee receives 2 extra weeks' tax credits and SRCOP, or in the 14th 4-weekly pay period of the year where the employee receives an extra 4 weeks' tax credits and SRCOP. Monthly paid employees only receive 12 monthly payments in a tax year, so this issue does not affect them.

The following summary illustrates the tax treatment which should apply in week 53:

Tax basis in operation	Payroll treatment in Week 53
Cumulative Basis	Week 1 Basis based on 1/52 nd of the annual tax credit and SRCOP shown on latest RPN
Week 1 Basis	Week 1 Basis based on 1/52 nd of the annual tax credit and SRCOP shown on the latest RPN
Emergency Basis	Emergency Basis continues in absence of an RPN

In relation to the table above, when using payroll software, the change above (i.e. Week 1 Basis being applied to those employees for whom a cumulative RPN is held) is generally performed automatically by the software in a Week 53 payroll.

The legislation provides that where an employer changes an employee's normal pay day, for whatever reason, during the current or preceding tax year, resulting in a Week 53, Fortnight 27 or 14th 4-weekly pay period, he is not entitled to an additional week's tax credits and SRCOP as outlined above.

In addition, where a payment, including a notional payment, is made to an employee on 31st December and this is not the employee's normal payday, the additional tax credit and SRCOP will not apply. However, an employer should apply the Week 53 payroll treatment as outlined in the table above and it will be up to Revenue to police whether an employee is entitled to the extra week of tax credits and SRCOP when carrying out an end of year review of the individual's tax liability.

Example 9

Sarah is employed and earns €1,200 per week. Her employer holds a cumulative RPN which contains a tax credit and SRCOP of €3,550 and €40,000 respectively. Calculate her Income tax liability in week 53.

Calculation of Income Tax under the PAYE System

Solution 9

Sarah's Income tax liability for Week 53 is calculated on the Week 1 Basis as follows:

<i>Gross Pay</i>		<i>€1,200.00</i>
<i>SRCP</i>	$€40,000 / 52 =$	<i>€769.24</i>
<i>Gross Tax</i>	$€769.24 @ 20\% =$	<i>€153.84</i>
	$€430.76 @ 40\% =$	<i><u>€172.30</u></i>
		<i>€326.14</i>
<i>Less Tax Credits</i>	$€3,550 / 52 =$	<i><u>€68.27</u></i>
<i>Tax liability</i>		<i>€257.87</i>

For 2023, a week 53 should only arise for employees who are weekly paid on a Sunday. Where an employer's normal weekly (fortnightly or 4 weekly) pay day falls on 1st January, which is a public holiday, this should be regarded as week 1 of that year where the employer makes the wages available to the employee on the **immediately preceding banking day**. Where the funds are made available earlier than the preceding banking day, Revenue will regard the payment as being on that earlier date. While this could give rise to a 53rd payment in the year, the employee would not be entitled to benefit from the Week 53 treatment as the 53rd payment arose due to a change in the employee's normal pay day.

It is common practice for employees to be on holiday during the Christmas period and for holiday pay to be paid to employees in advance as the employer will be closed over the Christmas holidays. It is not uncommon to see an employee receiving two or three weeks' pay in week 51 in advance of the Christmas holidays. Where an employee is receiving 2 weeks' pay (i.e. 1 week's wages plus 1 week of holiday pay) in week 51, this does not give rise to any problems. The employee can be granted 2 weeks of tax credits, SRCP, USC COPs and 2 PRSI contribution weeks. This ensures the employee's Tax, PRSI and USC record is correct for the year.

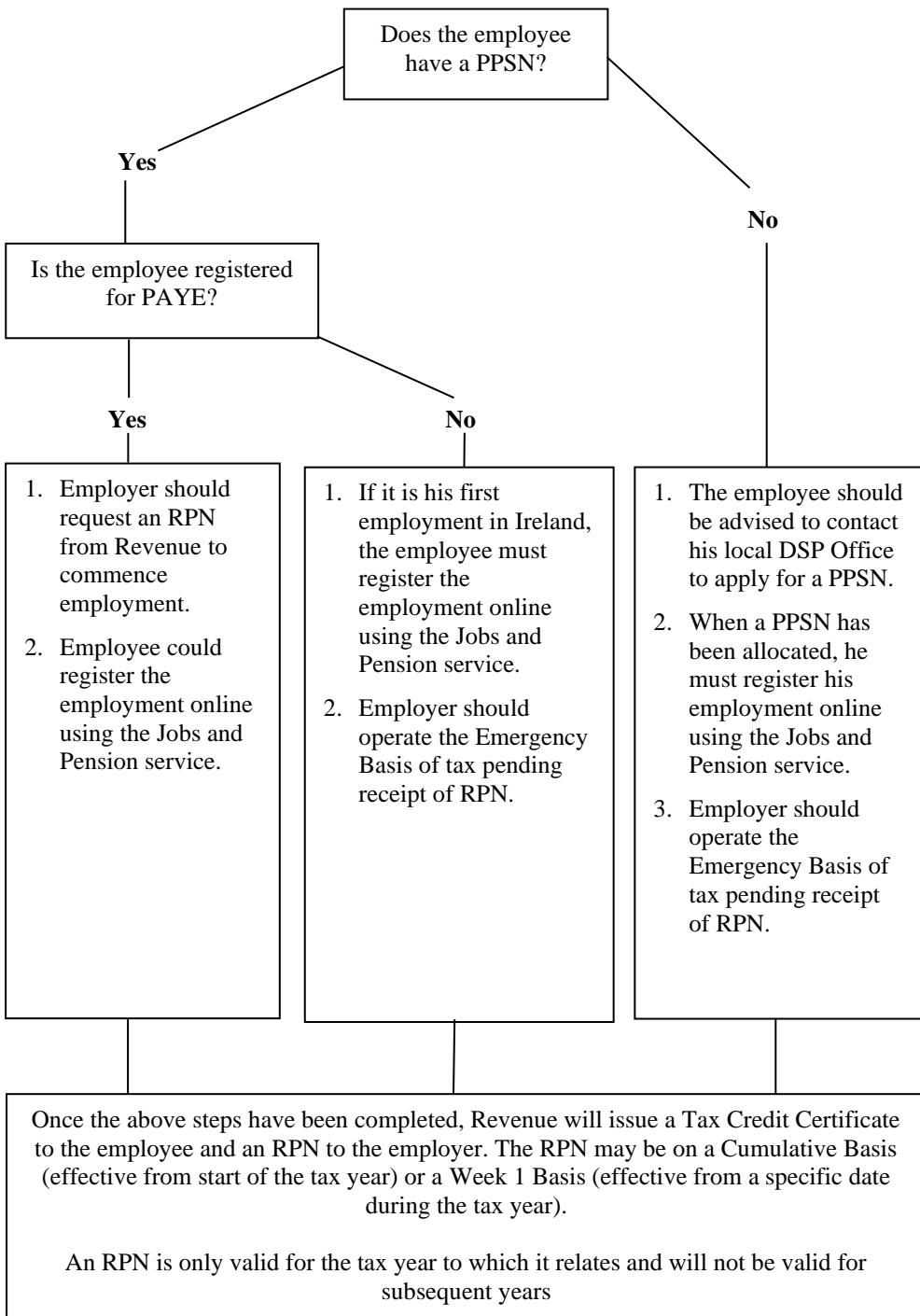
However, where an employee receives 3 weeks' pay in week 51 (i.e. 1 week's wages plus 2 weeks' holiday pay), it is not correct to process this total payment in week 51, regardless of whether it is a week 53 year or not. The correct treatment is to record 2 weeks' pay in week 51, and either:

- Process the tax year end and record the third week's pay as the first week of the new tax year, or
- If it is a 53 week year, record the third week's pay separately in week 53 on the Week 1 Basis.

If we consider an employee who is normally paid on a Friday, week 51 in 2023 falls on 22nd December. This employee can be paid in advance for 1 week to bring him up to week 52 (29th December), which is not an issue. However, the third week's payment should be correctly processed as week 1 of 2024 and reported in a Payroll Submission with a pay date of Friday 5th January 2024. If 3 weeks' pay was processed in week 51, it is likely that the employee would pay tax and USC on 3 weeks' earnings and only allowed 2 weeks' tax credits, SRCP, USC Cut-Off Points and 2 PRSI contribution weeks, or incorrectly allocated a 53rd week (i.e. 3 weeks' tax credits and SRCP and USC Cut-Off Points) and it is also likely that the employee would remain on the Cumulative Basis. In addition, the employee may only have 51 pay days in 2024!.

CHAPTER 6

What happens when a new employee starts work?



CHAPTER 7

Personal Taxation

- 1. Taxation of Married Couples & Civil Partners**
 - 2. Basis of Assessment for Married Couples and Civil Partners**
 - 3. Joint Assessment**
 - 4. Separate Assessment**
 - 5. Single Assessment (Separate Treatment)**
 - 6. Year of Marriage**
 - 7. Year of Death**
 - 8. Separation and Divorce**
 - 9. Age Exemption and Marginal Relief**
 - 10. Key Employees Engaged in Research & Development**
 - 11. Tax relief on Lump Sum Payments due to Changes in Employment**
 - 12. Tax Treatment of Personal Injury Compensation Payments**
-

1. Taxation of Married Couples and Civil Partners

Civil partnerships for same-sex couples were introduced in January 2011 under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Since the commencement of the **Marriage Act 2015** on 16th November 2015, it is no longer possible to register a civil partnership. Couples already in a civil partnership can apply to marry or remain as they are. If they marry, their civil partnership is automatically dissolved. Partnerships registered abroad since 16th May 2016 are not recognised as civil partnerships in Ireland.

This chapter explains the tax treatment of married couples and civil partners in the year of marriage or year of registration of civil partnership and in subsequent years, including year of separation or death.

For tax purposes, both partners continue to be treated as two single people in the year of marriage or civil partnership. However, if the tax they pay as two single people in that year is greater than the tax that would be payable if they had been taxed as a married couple or as civil partners, a refund of the difference can be claimed. This will be discussed in more detail later.

Note: While we use the terms “marriage” and “spouse” in this chapter they may be read as “civil partnership” and “civil partner” as appropriate.

1.1 Assessable Spouse or Nominated Civil Partner

It is important to tell Revenue, as soon as possible once a couple gets married by giving details of:

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- Their own PPSN and their spouse's PPSN, and
- The date of their marriage.

An individual can request for his or her civil status to be updated through 'My Profile' or 'Manage My Record' in myAccount. Both spouses must be registered for myAccount in order to verify the request.

One partner in a marriage or civil partnership is known as the assessable spouse or nominated civil partner respectively and it is this partner who must complete and submit a tax return for the couple to Revenue. As the name suggests it is this spouse or partner who is assessed by Revenue and who is liable for the combined tax liability of the couple. Whichever partner becomes the assessable spouse or nominated civil partner may be decided upon by the couple themselves.

A couple can decide which spouse is to be the assessable person by:

- Using myAccount to update their civil status and select their basis of assessment,
- Completing an "Assessable Spouse Election Form" which is available at: <http://www.revenue.ie/en/life-events-and-personal-circumstances/documents/assessable-spouse-election-form.pdf>, (*a copy is included at the end of this chapter*) or a "Nominated Civil Partner's Election Form" which is available at: <https://www.revenue.ie/en/life-events-and-personal-circumstances/documents/nominated-civil-partner-election-form.pdf>, or
- Sending a letter, signed by both spouses, nominating the assessable partner.

This should be done before 1st April in the year in which you want the selection to apply. If no selection is made, the spouse with the higher income automatically becomes the assessable spouse.

The nominated spouse or civil partner will remain the assessable spouse until either:

- The couple jointly elect the other spouse, or
- One of the partners elects for separate assessment or single assessment.

2. Basis of Assessment for Married Couples and Civil Partners

Married couples and civil partners may be assessed to income tax in one of three ways:

- Joint Assessment, or
- Separate Assessment, or
- Single Assessment (Separate Treatment)

3. Joint Assessment¹

Joint Assessment is normally the most favourable method of assessment and is automatically applied by Revenue once they are notified of the marriage or civil partnership. One partner is called the assessable spouse or nominated civil partner and it is this partner, who is liable for the combined tax liability of the couple. This does not prevent a couple electing to be assessed under the separate assessment basis or the single assessment basis. Both the separate assessment basis and the single assessment basis will be discussed in more detail later.

Married couples and civil partners are normally treated as a single unit within the income tax system. This means that their income, tax credits and SRCOP are combined in the year and their

¹ Taxes Consolidation Act 1997, Section 1017

joint income tax liability is calculated. They are entitled to the married couple or civil partnership tax credits and SRCOP.

Note: Joint assessment does not apply for PRSI or USC purposes, as these liabilities apply to each spouse or partner separately.

The SRCOP under joint assessment varies between €49,000 and €80,000, depending on whether both partners are in receipt of income or not, and on the level of their individual incomes for the income tax year. A married couple or civil partnership can share their tax credits and SRCOP between them subject to certain restrictions. They can allocate their tax credits, except the PAYE tax credit, earned income tax credit and tax relief for expenses incurred in employment which are not transferable, but there are restrictions on how their SRCOP can be allocated.

A married couple or civil partnership is automatically entitled to a SRCOP of €49,000 for the current tax year. Where both partners have an income, their SRCOP is increased by the amount of the lesser taxable income subject to a maximum increase of €31,000 for the current tax year, bringing their combined maximum SRCOP up to €80,000. It can be seen therefore, that in the current tax year, the SRCOP for a married couple or civil partnership can vary between €49,000 where only one partner has an income, and €80,000 where both partners have income, and the lower taxable income is at least €31,000.

If Anne and Barry are a married couple, the following shows how their SRCOP (20% rate band) is calculated in the current tax year, depending on the level of their individual incomes.

Anne's Income	Barry's Income	Joint Income	Joint Annual SRCOP
€65,000	€20,000	€85,000	€69,000 (€49,000 + €20,000)
€30,000	€28,000	€58,000	€77,000 (€49,000 + €28,000)
€40,000	Nil	€40,000	€49,000 (€49,000 + Nil)
€40,000	€10,000	€50,000	€59,000 (€49,000 + €10,000)

Married couples or civil partners can allocate their SRCOP between them in any manner they wish, subject to the SRCOP for one partner not exceeding €49,000 in the current tax year. The incorrect allocation of SRCOPs between spouses/partners can often lead to overpayments of tax as outlined by the following examples. A couple should review the allocation of their SRCOP each year to ensure they do not pay tax at the higher rate, where it is not necessary. If they believe they have overpaid tax, they need to contact Revenue to request a refund, or it can be claimed online via myAccount.

Example 1

Alan and Bernie are a married couple, with the following incomes:

	Alan	Bernie	Joint
Income	€38,000	€34,000	€72,000
SRCOP	€49,000	€31,000	€80,000
Taxed @ 20%	€38,000	€31,000	€69,000
Taxed @ 40%	nil	€3,000	€3,000

Based on the incomes of each spouse, the couple are entitled to a joint SRCOP of €80,000, which is generally allocated in the above manner by Revenue. The couple need to contact Revenue to adjust the allocation of the SRCOP or they will overpay tax by €600 (€3,000 @ 20% (40% -

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20%). In this example the SRCOP should be allocated to ensure each spouse only pays tax at 20% (i.e. at least €38,000 to Alan and at least €34,000 to Bernie), with the balance allocated between them as they wish.

Note: If one (or both) of the spouses or civil partners register for myAccount and enter the expected amounts of their individual incomes, myAccount will recommend how the couple should best allocate their SRCOP and tax credits.

Example 2

Colm and Diane are a married couple, with the following incomes:

	Colm	Diane	Joint
Income	€50,000	€34,000	€84,000
SRCP	€49,000	€31,000	€80,000
Taxed @ 20%	€49,000	€31,000	€80,000
Taxed @ 40%	€1,000	€3,000	€4,000

In this example, there is no difference in the tax liability; however, the spouse with the lower income incurs more tax at the higher rate.

Example 3

Enda and Fiona are a married couple, with the following incomes:

	Enda	Fiona	Joint
Income	€42,000	€28,000	€70,000
SRCP	€45,500	€31,500	€77,000
Taxed @ 20%	€42,000	€28,000	€70,000
Taxed @ 40%	nil	nil	nil

This is a favourable result as each spouse is only paying tax at the standard rate and the unused balance of their SRCP is shared equally between them.

Example 4

Calculate the income tax liability for a married couple, where the two spouses earn €42,000 and €21,500 respectively.

Solution 4

Their SRCP is $(€49,000 + €21,500) = €70,500$, i.e. €49,000 plus an amount equal to lower income subject to a maximum of €31,000. As both spouses are employed, they are each entitled to a PAYE tax credit of €1,775.

Spouse A earnings		€42,000
Spouse B earnings		€21,500
Total income		€63,500
SRCP	$€49,000 + €21,500$	€70,500
Gross tax	$€63,500 @ 20\% =$	€12,700
Less Tax Credits	<i>Married Couple PAYE tax credit (x 2)</i>	$€3,550$
		$\underline{€3,550}$
Net income tax liability		€7,100
		$\underline{€5,600}$

Example 5

Pat O'Donnell is married and is employed. He earns €33,000 per year. His wife Mary is employed and earns €15,000 per year. Calculate their joint income tax liability.

Solution 5

Pat's income		€33,000
Mary's income		<u>€15,000</u>
Total income		€48,000
 SRCOP	 $€49,000 + €15,000$	 €64,000
Gross tax	€48,000 @ 20% =	€9,600
 Less Tax Credits	 <i>Married Couple</i>	 €3,550
	PAYE tax credit (x 2)	<u>€3,550</u>
		 €7,100
Net income tax liability		€2,500

Example 6

Mike Murphy is married and is employed by ABC Ltd. He earns €37,000 per year. His wife has no income and stays at home to care for their young children. Calculate their joint income tax liability.

Solution 6

Mike's earnings		€37,000
SRCOP		€49,000
 Gross tax	 €37,000 @ 20% =	 €7,400
 Less Tax Credits	 <i>Married Couple</i>	 €3,550
	Home Carer tax credit	€1,700
	PAYE tax credit	<u>€1,775</u>
Net income tax liability		 €7,025 €375

Example 7

Aidan O'Reilly is married and earns €50,000 per year from his employment. His wife has no income. Calculate their joint income tax liability.

Solution 7

Aidan's earnings		€50,000
SRCOP		€49,000
 Gross tax	 €49,000 @ 20% =	 €9,800
	€1,000 @ 40% =	<u>€400</u>
		€10,200
 Less Tax Credits	 <i>Married Couple</i>	 €3,550
	PAYE tax credit	<u>€1,775</u>
Net income tax liability		 €5,325 €4,875

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Example 8

Paul O'Connell is married and is employed. He earns €46,000 per year. His wife Helen is also employed and earns €36,000 per year. Calculate their joint income tax liability.

Solution 8

<i>Paul's earnings</i>		€46,000
<i>Helen's earnings</i>		<u>€36,000</u>
<i>Total income</i>		€82,000
<i>SRCP</i>	$€49,000 + €31,000$	€80,000
<i>Gross tax</i>	$€80,000 @ 20\% =$ $€2,000 @ 40\% =$	€16,000 <u>€800</u> €16,800
<i>Less Tax Credits</i>	<i>Married Couple</i>	€3,550
	<i>PAYE tax credit (x 2)</i>	<u>€3,550</u>
<i>Net income tax liability</i>		€7,100
		€9,700

Where married couples or civil partners are both employees and are jointly assessed for income tax, either spouse or civil partner can submit an electronic return of taxes on behalf of the couple. It does not apply where either or both spouses are chargeable persons (i.e. ROS).

3.1 Joint Assessment and the Home Carer tax credit

The home carer tax credit of €1,700 may be claimed by a married couple or civil partnership, who are jointly assessed for income tax purposes, where one spouse or civil partner stays at home to take care of a dependent person. The couple are entitled to a SRCP of €49,000 where only one partner is working. However, if the couple are claiming the home carer tax credit and the second partner has income, the couple will not be entitled to any increased SRCP in addition to the home carer tax credit.² Therefore, a couple must choose whichever option is more tax beneficial for them i.e. the home carer tax credit, or the increased SRCP. The couple should compare their joint tax liability arising, if no home carer tax credit is claimed, against their joint income tax liability arising where the home carer tax credit is claimed without any increase in the couples SRCP.

Example 9

Anita and Bob are a married couple. Bob is employed full time earning €52,000 per year. Anita is a home carer and earns €7,000 per year from her part-time employment. Compare their joint tax liability depending on whether they avail of the increased SRCP or the home carer tax credit.

Solution 9

<i>Option A – Claim Increased SRCP</i>		
<i>Bob's earnings</i>		€52,000
<i>Anita's earnings</i>		<u>€7,000</u>
<i>Total income</i>		€59,000
<i>SRCP</i>	$€49,000 + €7,000$	€56,000

² Taxes Consolidation Act 1997, Section 466A

<i>Gross tax</i>	$\text{€}56,000 @ 20\% =$ $\text{€}3,000 @ 40\% =$	$\text{€}11,200$ <u>$\text{€}1,200$</u> $\text{€}12,400$
<i>Less Tax Credits</i>	<i>Married Couple</i> PAYE - Bob PAYE - Anita ($\text{€}7,000 \times 20\%$)	$\text{€}3,550$ $\text{€}1,775$ <u>$\text{€}1,400$</u> $\text{€}6,725$
<i>Net income tax liability</i>		$\text{€}5,675$

Solution 9

Option B – Claim Home Carer Tax Credit

<i>Bob's earnings</i>		$\text{€}52,000$
<i>Anita's earnings</i>		<u>$\text{€}7,000$</u>
<i>Total income</i>		$\text{€}59,000$
<i>SRCP</i>	$\text{€}49,000 + \text{€}0$	$\text{€}49,000$
<i>Gross tax</i>	$\text{€}49,000 @ 20\% =$ $\text{€}10,000 @ 40\% =$	$\text{€}9,800$ <u>$\text{€}4,000$</u> $\text{€}13,800$
<i>Less Tax Credits</i>	<i>Married Couple</i> Home Carer PAYE - Bob PAYE - Anita ($\text{€}7,000 \times 20\%$)	$\text{€}3,550$ $\text{€}1,700$ $\text{€}1,775$ <u>$\text{€}1,400$</u> $\text{€}8,425$
<i>Net income tax liability</i>		$\text{€}5,375$

In this example, Anita and Bob should choose the home carer tax credit as opposed to the increased SRCP.

Where the carer's income (excluding any DSP Carer's Benefit or Allowance) exceeds €7,200 in a tax year, the home carer tax credit is restricted by 50% of the amount by which the income of the carer exceeds €7,200. If the carer's income exceeds €10,600, the home carer tax credit is reduced to zero ($\text{€}10,600 - \text{€}7,200 = \text{€}3,400 \times 50\% = \text{€}1,700$). This annual threshold of €7,200 is increased by 1/52nd in a Week 53 year.

There is also a look-back rule which provides that if the home carer tax credit is granted in one year, and in the following year the home carer's total income exceeds the limit of €7,200, the home carer's tax credit can be claimed in that second year, provided the other conditions are met. With the look-back rule, the amount of the tax credit is restricted to the amount granted for the preceding year. Where the carer's income is between €7,200 and €10,600 for the tax year, consideration should be given to whether it would be more beneficial for the couple to claim the reduced home carer tax credit (i.e. reduced by 50% of the excess over €7,200) or based on the look back rule. The look-back rule cannot be availed of in consecutive tax years.

Example 10

Sheila and John are married and jointly assessed for tax purposes. Sheila is the primary carer of their young children. Sheila was not employed in 2022 and the couple claimed the Home Carer tax credit of €1,600 in 2022. Sheila commenced a part-time employment in 2023 and will earn €10,000 this year.

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Although Sheila's income will exceed the income limit of €7,200 for 2023, using the look-back rule, the couple are still entitled to claim the Home Carer tax credit in 2023 if the other qualifying criteria are met. However, the credit will be restricted to €1,600 which was the entitlement for 2022. If Sheila continued to earn €10,000 in 2024, they would not be entitled to claim the Home Carer tax credit. While the couple may be entitled to claim the home carer tax credit, they should also consider which is more beneficial – the home carer tax credit or the increased SRCOP.

Where a home carer's spouse or civil partner is already paying tax at the higher rate and the home carer's income exceeds €7,600, the increased SRCOP will generally be more beneficial for the couple.

3.2 PAYE Tax Credit and Adult Dependent DSP Benefits

Where an individual is in receipt of a payment from the DSP (e.g. State Pension (Contributory)) they may also be entitled to claim an increase for an adult dependent, subject to certain conditions being satisfied, which mainly relate to the level of income of the dependent adult.

When a person applies for an increase for an adult dependent on a long term DSP payment, it is paid directly to the adult dependent. However, the adult dependent can request that it be paid to the claimant. Regardless of who the payment is made to, any increase for an adult dependent is considered to be the income of the claimant for income tax purposes.³

Assuming the adult dependent has no income in his/her own right, the SRCOP and tax credits for a couple who are jointly assessed for tax purposes where only one partner is in receipt of income will apply i.e. only one PAYE tax credit will be granted and a SRCOP of €49,000 will apply.

Example 11

Michael and Jane are a married couple and jointly assessed for tax purposes. Michael is in receipt of an occupational pension from his former employer of €28,400 per year. He also receives the State Pension (Contributory) of €13,796 per year. Michael claims an adult dependent increase in the State Pension (Contributory) for Jane of €9,188 per year and this amount is paid directly to Jane. Calculate their joint income tax liability.

Solution 11

Michael's earnings	€28,400 + €13,796	€42,196.00
Jane's earnings		€9,188.00
Total income		€51,384.00
 SRCOP	 €49,000 + €0	 €49,000.00
Gross tax	€49,000.00 @ 20% =	€9,800.00
	€2,384.00 @ 40% =	€953.60
		€10,753.60
 Less Tax Credits	 <i>Married Couple</i>	 €3,550
	PAYE (x 1)	€1,775
Net income tax liability		€5,325.00
		€5,428.60

Even though the increase is paid directly to Jane, for tax purposes it is considered to be the income of Michael. Only 1 PAYE tax credit is allowed and there is no increase in their SRCOP.

³ Taxes Consolidation Act 1997, Section 126 as amended by Finance (No. 2) Act 2013

4. Separate Assessment⁴

Where a married couple or civil partners are living together, they can elect to be separately assessed for income tax purposes. A claim for separate assessment must be made before 1st April in the tax year. Where an election for separate assessment is made, there is no assessable spouse or nominated civil partner.

Where separate assessment is claimed, the married couple or civil partnership tax credit and SRCOP are divided equally between the partners. Other tax credits and reliefs are generally granted to the partner who actually bears the cost. Both partners will then be assessed to income tax effectively as single persons during the income tax year. However, at the end of the year they can request Revenue to review their tax liability. This allows them to transfer any unused SRCOP and tax credits, subject to the restrictions already mentioned (i.e. one partner can have a maximum SRCOP of €49,000 which can be increased by the amount of the lower income, subject to a maximum increase of €31,000, and the PAYE tax credit is non-transferable). The maximum SRCOP that can be transferred is €9,000 (the difference between €49,000 and €40,000).

There will be no difference in the income tax liability if a married couple or civil partners are jointly assessed, or separately assessed for income tax. However, under separate assessment it is possible that they will pay more income tax individually during the year than they should do as a couple, but if at the end of the tax year, the couple request a review of their tax liability, they will be refunded any tax overpaid. Separate assessment will remain in force until the partner who requested it withdraws the request.

Example 12

Taking Example 8 above, calculate Paul and Helen O'Connell's income tax liability, assuming they opted for separate assessment instead of joint assessment.

Solution 12

Paul O'Connell – Separate Assessment

<i>Paul's earnings</i>		€46,000
<i>SRCP</i>		€40,000
<i>Gross tax</i>	€40,000 @ 20% =	€8,000
	€6,000 @ 40% =	<u>€2,400</u>
		€10,400
<i>Less Tax Credits</i>	<i>Single Person</i>	€1,775
	<i>PAYE tax credit</i>	<u>€1,775</u>
<i>Net income tax liability</i>		€3,550

Helen O'Connell – Separate Assessment

<i>Helen's earnings</i>		€36,000
<i>SRCP</i>		€40,000
<i>Gross tax</i>	€36,000 @ 20% =	€7,200
<i>Less Tax Credits</i>	<i>Single Person</i>	€1,775
	<i>PAYE tax credit</i>	<u>€1,775</u>
<i>Net income tax liability</i>		€3,550

⁴ Taxes Consolidation Act 1997, Section 1023

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Separate Assessment v Joint Assessment

Total tax payable under Separate Assessment ($\text{€}6,850 + \text{€}3,650$)	$\text{€}10,500$
Total tax payable under Joint Assessment (see example 8 above)	$\text{€}9,700$
Difference	$\text{€}800$

The difference of €800 arises because under separate assessment their SRCOP has been divided equally between them and Helen did not use all of her SRCOP. Both spouses have been assessed to tax effectively as single persons during the income tax year. However, at the end of the year their liability will be reassessed on a joint assessment basis, and this will allow them to transfer any unused SRCOP and unused tax credits to the other spouse.

Helen's earnings are €36,000 but she has a SRCOP of €40,000. Therefore, she can transfer the unused portion of €4,000 to her husband Paul and reduce his income tax liability as follows:

Recalculation of Paul O'Connell's income tax liability

Paul's earnings	$\text{€}46,000$
SRCP	$(\text{€}40,000 + \text{€}4,000 \text{ transferred by Helen})$
<i>Gross tax</i>	$\text{€}44,000 @ 20\% =$
	$\text{€}2,000 @ 40\% =$
	$\text{€}8,800$
	$\text{€}800$
	$\text{€}9,600$
<i>Less Tax Credits</i>	<i>Single Person tax credit</i>
	$\text{€}1,775$
	<i>PAYE tax credit</i>
	$\underline{\text{€}1,775}$
<i>Net income tax liability</i>	$\text{€}3,550$
	$\text{€}6,050$

Recalculated Separate Assessment v Joint Assessment

Total tax payable under Separate Assessment ($\text{€}6,050 + \text{€}3,650$)	$\text{€}9,700$
Total tax payable under Joint Assessment (see example 8 above)	$\text{€}9,700$
Difference	0

5. Single Assessment (Separate Treatment)⁵

All single people are assessed to tax under the single assessment basis. They are assessed on their own income and receive the appropriate tax credits due to a single person.

A married couple or civil partnership is deemed to be jointly assessed unless they elect for separate or single assessment. Under single assessment there is no assessable spouse or nominated civil partner. To qualify, one partner must elect for the single assessment basis to apply at any time in the income tax year. This basis will then apply for all of that year and for all subsequent years, until the partner who made the original request withdraws it.

Under single assessment, both partners are assessed to income tax as single persons. Single assessment differs from separate assessment in that any tax credits or SRCOP not used by one partner may not be transferred to the other partner. Both partners are effectively assessed as single persons and for that reason single assessment is usually only availed of by married couples or civil partners where there has been a breakdown in their marriage or civil partnership.

⁵ Taxes Consolidation Act 1997, Section 1016

Example 13

Susan Browne is single, employed and earns €29,500 per year. Calculate her income tax liability.

Solution 13

Susan's earnings		€29,500
SRCP		€40,000
<i>Gross tax</i>	$\text{€29,500} @ 20\% =$	€5,900
<i>Less Tax Credits</i>	<i>Single Person</i>	€1,775
	<i>PAYE tax credit</i>	<u>€1,775</u>
<i>Net income tax liability</i>		<u>€3,550</u>
		€2,350

Example 14

James and Mary are a married couple, however due to a marital breakdown, Mary has elected for single assessment. Mary is employed and earns €31,000. Calculate Mary's income tax liability.

Solution 14

Mary's earnings		€31,000
SRCP		€40,000
<i>Gross tax:</i>	$\text{€31,000} @ 20\% =$	€6,200
<i>Less Tax Credits</i>	<i>Single Person</i>	€1,775
	<i>PAYE tax credit</i>	<u>€1,775</u>
<i>Net income tax liability</i>		<u>€3,550</u>
		€2,650

In this example, Mary has a SRCP of €40,000 but is only utilising €31,000. The unused balance of €9,000 cannot be transferred to James.

6. Year of Marriage⁶

In the year of marriage both partners continue to be treated as single persons. The couple should inform Revenue when they get married. If the tax paid by the couple in the year of marriage is greater than the tax that would have been paid if the couple were assessed to tax under the joint assessment basis, a pro-rata refund of the difference can be claimed from Revenue, based on the number of months (part of a month is treated as a full month) in the year for which they have been married. A refund will only arise if the couple paid tax at different rates, or one spouse did not use all of his/her tax credits and SRCP, which can then be allocated to the other spouse. Any refund due will be calculated at the end of the tax year.

Example 15

Keith and Caroline got married on 31st July. Keith earned €47,000 and Caroline earned €23,750. Calculate their tax liability as follows:

- (a) Single assessment basis, and
- (b) Year of marriage, to include any refund due, if any.

⁶ Taxes Consolidation Act 1997, Section 1020

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Solution 15(a)

Keith – Single Assessment Basis

<i>Keith's earnings</i>		€47,000
<i>SRCP</i>		€40,000
<i>Gross tax:</i>	€40,000 @ 20% =	€8,000
	€7,000 @ 40% =	<u>€2,800</u>
		€10,800
<i>Less Tax Credits</i>	<i>Single Person</i>	€1,775
	<i>PAYE tax credit</i>	<u>€1,775</u>
<i>Net income tax liability</i>		<u>€3,550</u>
		€7,250

Caroline – Single Assessment Basis

<i>Caroline's earnings</i>		€23,750
<i>SRCP</i>		€40,000
<i>Gross tax:</i>	€23,750 @ 20% =	€4,750
<i>Less Tax Credits</i>	<i>Single Person</i>	€1,775
	<i>PAYE tax credit</i>	<u>€1,775</u>
<i>Net income tax liability</i>		<u>€3,550</u>
		€1,200
<i>Combined income tax liability</i>	<i>Keith</i>	€7,250
	<i>Caroline</i>	<u>€1,200</u>
		€8,450

Solution 15(b)

Keith & Caroline – Joint Assessment Basis

<i>Joint Earnings</i>	€47,000 + €23,750	€70,750
<i>SRCP</i>	€49,000 + €23,750	€72,750
<i>Gross tax:</i>	€70,750 @ 20% =	€14,150
<i>Less Tax Credits:</i>	<i>Married Couple</i>	€3,550
	<i>PAYE tax credit (x 2)</i>	<u>€3,550</u>
<i>Net income tax liability</i>		<u>€7,100</u>
		€7,050
<i>Difference</i>	<i>Single Assessment</i>	€8,450
	<i>Joint Assessment</i>	<u>€7,050</u>
		€1,400

The difference of €1,400 relates to the full tax year. As Keith and Caroline have only been married for 6 months of the year (part of a month counts as a full month), they are due a refund of €700 (€1,400 x 6/12). Keith and Caroline should submit a tax return to Revenue after 31st December claiming year of marriage relief. The refund of €700 will be apportioned between them in proportion to the tax paid by each of them as follows:

$$\text{Keith: } \frac{\text{€700} \times \text{€7,250}}{\text{€8,450}} = \text{€600.59} \quad \text{Caroline: } \frac{\text{€700} \times \text{€1,200}}{\text{€8,450}} = \text{€99.41}$$

7. Year of Death

Where one spouse or civil partner dies during a tax year, their tax treatment in that year depends on the method of assessment in place i.e. single, separate or joint assessment.

7.1 Single Assessment (Separate Treatment)

If the couple had elected for single assessment for the year, the personal tax credit (€1,775) granted at the start of the tax year to the surviving partner will be replaced by the widowed person or surviving civil partner tax credit in the year of bereavement (€3,550). The SRCOP in place at the start of the tax year will remain in place for the entire year. Any unused tax credits originally allocated to the deceased partner cannot be availed of. The deceased partner is assessed to tax on income earned from 1st January to the date of death.

7.2 Separate Assessment

If the couple had opted for separate assessment for the year, the treatment is similar to that under single assessment in that the personal tax credit for the surviving partner will be replaced by the widowed person or surviving civil partner tax credit in the year of bereavement. In addition, the surviving partner is also entitled to any unused tax credits and SRCOP originally allocated to the deceased partner.

It should be noted that to qualify for the more favourable year of death tax treatment which applies to jointly assessed couples, an election for joint assessment (nomination of an assessable spouse or nominated civil partner) must be made before 1st April in that tax year.

7.3 Joint Assessment

Where the couple were assessed to tax on the joint assessment basis, the tax treatment depends on which partner dies.

If the assessable spouse or nominated civil partner dies, he is assessed on their joint income from the 1st January to the date of his death and will be granted a full year's tax credits and SRCOP. The surviving spouse or civil partner is assessed to tax as a single person from the date of the assessable spouse or nominated civil partner's death to the end of the tax year. She is assessed on her own income only for that period and is granted the widowed person or surviving civil partner year of bereavement tax credit and the widowed person's SRCOP which can result in a substantially lower tax liability than would otherwise arise.

If the non-assessable spouse or nominated civil partner dies, the widower or surviving civil partner is assessed to tax for the full tax year on his own income and his deceased partner's income up to the date of death. The married couple or civil partnership tax credits and SRCOP apply for the full tax year.

Example 16

Matt and Helen Murray are married and are jointly assessed for tax purposes, Matt being the assessable spouse. Both are employed and are entitled to the basic personal tax credits of €7,100 (married couple tax credit and two PAYE tax credits).

Matt died on 31st October. Matt and Helen's earnings and tax paid from 1st January to 31st October are €31,000 earnings and €1,762.50 tax and €23,000 earnings and €3,120.80 tax respectively. Helen earned €4,600 from 1st November to 31st December, and she also received €2,029.50 in widow's contributory pension payments.

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Calculate their income tax liability for:

- (a) The pre-death period to include any refund due, if any.
- (b) The post death period.

Solution 16(a)

As Matt was the assessable spouse, two tax calculations must be prepared i.e. one for the pre-death period and one for the post death period, as follows:

Pre-death liability - 1st January to 31st October

Matt's income		€31,000.00
Helen's income		€23,000.00
Total income		<u>€54,000.00</u>
SRCPD	(€49,000 + €23,000)	€72,000.00
Gross tax	€54,000 @ 20% =	€10,800.00
Less tax credits		<u>€7,100.00</u>
Income tax liability		€3,700.00
Less tax paid	Matt Helen	€1,762.50 <u>€3,120.80</u>
Tax overpaid / Refund due		<u>€4,883.30</u> €1,183.30

Solution 16(b)

Post death liability – 1st November to 31st December

Helen's earnings		€4,600.00
Widow's pension		<u>€2,029.50</u>
Total		€6,629.50
SRCPD		€40,000.00
Gross Tax	€6,629.50 @ 20% =	€1,325.90
Less tax credits		
Widowed person year of bereavement		€3,550.00*
PAYE tax credit		<u>€1,325.90**</u>
Tax payable		<u>€4,875.90</u> Nil

* €3,550 is the tax credit due to a widowed person in the year of bereavement.

** The PAYE tax credit is restricted to 20% of her PAYE income (€6,629.50 @ 20%).

Note: Tax credits are only granted to the extent that they reduce the tax liability to zero. If Helen had continued to pay tax on the same basis as prior to her husband's death, she would have suffered additional tax between 1st November and 31st December. As you can see the treatment granted in the year of death is advantageous to the surviving spouse.

7.4 Phasing out of W PPSNs

Prior to 2000, when a couple married, the husband was automatically deemed to be the assessable spouse. As a consequence, any woman married prior to that date had her PPS number (PPSN) cancelled and she was issued with a new PPSN which consisted of her husband's PPSN with a

W added. For example, if the husband's PPSN was 1234567P; his wife was allocated a new number 1234567PW. Since 2000, a married woman retains her own PPSN after marriage.

The DSP are in the process of phasing out PPSNs with the letter W attached to it. Certain life events will require the "W" PPSN to be changed (e.g. a new PPSN is required to apply for a Public Services Card, access the Local Property Tax online system, file stamp duty returns, Capital Acquisitions Tax returns, separation or death of a spouse or partner, etc.). Alternatively, the individual may request the change.

8. Separation and Divorce⁷

Revenue should be notified as soon as possible after the separation or divorce of a couple. How a couple are taxed in the year of separation or divorce and subsequent years depends on how they were taxed prior to the separation.

Where a couple separate during a tax year, and the separation is likely to be permanent, they will be taxed in that year as follows:

8.1 Joint Assessment prior to Separation

The assessable spouse or nominated civil partner will be entitled to the married couple or civil partnership tax credit and SRCOP for the full year. He will be taxed on his own income for the full year and his partner's income from 1st January to the date of separation. The other partner will be taxed on his/her own income from the date of separation to the 31st December and will be entitled to the single person annual tax credits and SRCOP.

8.2 Separate Assessment prior to Separation

Where Separate Assessment applied prior to separation, the partners are entitled to transfer unused tax credits and SRCOP to each other up to the date of separation.

8.3 Single Assessment prior to Separation

Where single assessment applied prior to the separation, there is no change after the separation, and each partner will continue to be assessed as a single person.

8.4 Years following Separation

The assessment in years following a separation depends on whether maintenance payments are made to the other partner, and if so, whether such payments are voluntary or made under legally enforceable agreements. Where a separation or divorce occurs and no maintenance payments are made, each partner will be taxed as a single person.

Where voluntary maintenance payments are made, they are not taken into account when calculating either partner's tax liability. No tax relief is due to the partner making the payment, and it is not regarded as a taxable source of income for the partner in receipt of the payments. However, if the voluntary payments are sufficient to wholly or mainly maintain the partner, the payer will be entitled to claim the married person or civil partnership tax credit. The partner in receipt of the payment is entitled to the single person's tax credit. Each partner is only entitled to the single person's SRCOP.

Maintenance payments made under a legally enforceable separation agreement, or a deed of separation or covenant are payable without the deduction of tax. The payment is regarded as a

⁷ Taxes Consolidation Act 1997, Section 1026

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taxable source of income for the recipient, and tax relief is granted to the partner making the payment. Payments may also be subject to PRSI for the recipient, and the partner making the payment is entitled to claim a PRSI refund on the amount at the end of the tax year. The refund will be calculated by reducing the employee's reckonable earnings, by the amount of the maintenance payment. Both partners are taxed as single persons.

Legally enforceable maintenance payments for a spouse or civil partner are liable to USC in the hands of the recipient, and USC relief is available to the partner making the payment. USC relief is generally claimed following the end of the tax year. However, where the payer is in employment, Revenue may authorise the employer to pay an amount to the employee, equal to the amount of maintenance, free of USC.

A legally separated couple can elect to be treated as a married couple or civil partners for income tax purposes if:

- They are both resident in the State, **and**
- Maintenance payments are legally enforceable.

If the couple elect to be jointly assessed, maintenance payments are ignored for income tax, PRSI and USC purposes. For example, this may apply where only one partner is in receipt of income.

Where both partners are in receipt of income, separate assessment will apply. Tax credits and SRCOP will be apportioned between the partners, and unused credits and SRCOP can be transferred to the other partner at the end of the tax year, subject to the restrictions as mentioned previously.

Where a marriage or civil partnership is annulled, the partners are taxed as single persons, and cannot elect to be taxed as a married couple or civil partners.

Maintenance payments in respect of children are ignored for tax purposes (i.e. income tax, PRSI and USC relief is not available to the person making the payments), and the payments are not taxable for the recipient.

The Single Person Child Carer tax credit and SRCOP may be claimed by a separated parent (one parent only) who has a dependent child residing with him or her for the greater part of the tax year where he or she is not claiming the married couple or civil partnership tax credit and is not living with someone as husband and wife.

8.5 Divorce

To apply for a divorce in Ireland, certain conditions must be met, one of which is that the partners must have been living apart from each other for a period amounting to 2 out of the previous 3 years prior to the divorce application being made. Where a divorce is granted a couple will already have been separated for a number of years, and as such will most likely have been taxed under single assessment, whereby both are assessed to income tax, as if they were two single people. This would generally continue after a divorce has been granted. However, where both parties are resident in the State and remain unmarried, they may elect to be jointly assessed for income tax purposes. The rules in relation to years after separation and maintenance payments also apply to divorced persons.

9. Age Exemption and Marginal Relief⁸

Individuals aged 65 years or over are entitled to total exemption from paying income tax if their income does not exceed €18,000 for single/widowed or surviving civil partners and €36,000 for married couples and civil partnerships even where only one partner is aged 65 or over.

The limits can be increased by €575 for each of the first two qualifying children that reside with the individual at any time during the tax year and by €830 for each subsequent child. If 2 or more people are entitled to an increase in respect of the same child, the increase is apportioned between them based on the maintenance costs incurred by each person.

The definition of a “qualifying child” is that which applies to the Single Person Child Carer tax credit, which, generally speaking, is a child of the individual who is under 18 years of age at the beginning of the tax year, or in full time education if over 18 years of age.

Marginal relief is available to a single person aged 65 or over where his total income exceeds the age exemption limit of €18,000 but is less than €36,000. For married couples or civil partners, marginal relief is available where their total income exceeds €36,000 but is less than €72,000, assuming they have no qualifying children.

A rate of tax of 40% is payable on any income in excess of €18,000 for a single person or €36,000 for a married couple or civil partners. However, marginal relief only applies in a limited number of cases.

Traditionally, any person entitled to claim age exemption or marginal relief was required to claim it directly from Revenue following the end of the tax year. However, Revenue facilitates the operation of age exemption and marginal relief through the PAYE system.

Where age exemption or marginal relief applies, an individual will receive a Tax Credit Certificate allowing a SRCOP equal to the appropriate age exemption (€18,000 for a single person or €36,000 for married couples and civil partners aged 65 years or over with no qualifying children) and a tax credit equal to 20% of the SRCOP. The employer will also receive an RPN showing the same information. The employer should operate the Cumulative (or Week 1) Basis of tax using the tax credits and SRCOP advised on the RPN. If the individual's income does not exceed his SRCOP, his income will be taxed at the standard rate, however this gross tax liability will be reduced to zero once the tax credits have been deducted. Hence the individual will pay no tax where his income is below the age exemption limit.

Example 17

Tony, aged 65, is single and has taxable income of €17,000 in the current tax year. Revenue issued an RPN to his employer containing the following SRCOP, tax credits and tax rates:

Annual SRCOP	Annual Tax Credits	Tax Rate 1	Tax Rate 2
€18,000	(SRCOP @ 20%) = €3,600	20%	40%

Calculate his monthly and annual income tax liability.

Solution 17	Monthly	Annual
Income	€1,416.67	€17,000

⁸ Taxes Consolidation Act 1997, Section 188

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<i>SRCOP</i>		<i>€1,500.00</i>		<i>€18,000</i>
<i>Gross tax</i>	<i>€1,416.67 @ 20% =</i>	<i>€283.33</i>	<i>€17,000 @ 20% =</i>	<i>€3,400</i>
<i>Less tax credits</i>		<i>€300.00</i>		<i>€3,600</i>
<i>Tax payable</i>		<i>Nil</i>		<i>Nil</i>

If the individual's income exceeds his age exemption limit (i.e. the SRCOP on the RPN), the excess amount of his income will be liable to the marginal relief rate of tax of 40% which will be stated as Tax Rate 2 on the RPN issued to the employer.

Example 18

Trevor, aged 65, is single and has taxable income of €19,500 this year. Revenue issued an RPN to his employer stating the following SRCOP, tax credits and tax rates:

<i>Annual SRCOP</i>	<i>Annual Tax Credits</i>	<i>Tax Rate 1</i>	<i>Tax Rate 2</i>
<i>€18,000</i>	<i>(SRCOP @ 20%) =</i>	<i>20%</i>	<i>40%</i>

Calculate his monthly and annual income tax liability.

<i>Solution 18</i>	<i>Monthly</i>	<i>Annual</i>
<i>Income</i>	<i>€1,625.00</i>	<i>€19,500</i>
<i>SRCOP</i>	<i>€1,500.00</i>	<i>€18,000</i>
<i>Gross tax</i>	<i>€1,500 @ 20% =</i>	<i>€18,000 @ 20% =</i>
	<i>€125 @ 40% =</i>	<i>€3,600</i>
	<i>€300.00</i>	<i>€1,500 @ 40% =</i>
	<i>€50.00</i>	<i>€600</i>
	<i>€350.00</i>	<i>€4,200</i>
<i>Less tax credits</i>	<i>€300.00</i>	<i>€3,600</i>
<i>Tax payable</i>	<i>€50.00</i>	<i>€600</i>

It can be seen from this example that Trevor's annual income tax liability is €600 which equates to 40% of the amount of income which exceeds the age exemption limit (i.e. €19,500 - €18,000 = €1,500 @ 40% = €600).

While this example illustrates how marginal relief is calculated, it is not always the most favourable option for an individual. As Trevor is single and age 65, he would be entitled to the following SRCOP and tax credits:

	<i>SRCOP</i>	<i>Tax Credits</i>
<i>Single person</i>	<i>€40,000.00</i>	<i>€1,775.00</i>
<i>PAYE</i>		<i>€1,775.00</i>
<i>Age</i>		<i>€245.00</i>
<i>Total</i>	<i>€40,000.00</i>	<i>€3,795.00</i>

This would give rise to a more favourable tax liability as follows:

	<i>Monthly</i>	<i>Annual</i>
<i>Income</i>	<i>€1,625.00</i>	<i>€19,500.00</i>
<i>SRCOP</i>	<i>€3,333.34</i>	<i>€40,000.00</i>
<i>Gross tax</i>	<i>€1,625.00 @ 20% =</i>	<i>€19,500 @ 20% =</i>
	<i>€325.00</i>	<i>€3,900.00</i>
<i>Less tax credits</i>	<i>€316.25</i>	<i>€3,795.00</i>
<i>Tax payable</i>	<i>€8.75</i>	<i>€105.00</i>

Where an individual is in receipt of a taxable pension (i.e. State Pension (Contributory)) from the DSP, Revenue collects the tax due on this pension by reducing the claimants SRCOP and tax credits. This reduction can also be facilitated on an RPN which operates age exemption and marginal relief.

Example 19

Mary, aged 67, is single and has income of €9,500 for the current tax year from an occupational pension scheme. In addition, she is in receipt of the State Pension Contributory of €13,795.60. Revenue issued an RPN to her pension provider stating the following SRCOP, tax credits and tax rates:

	SRCP	Tax Credits
Original	€18,000.00	€3,600.00
Less DSP pension	<u>€13,795.60</u>	@ 20% = <u>€2,759.12</u>
Annual amount appearing on RPN	€4,204.40	€840.88

Tax Rate 1: 20% Tax Rate 2: 40%

Calculate her monthly and annual income tax liability as it would appear on the records of the pension company.

Solution 19	Monthly	Annual		
Income	€791.67	€9,500.00		
SRCP	€350.37	€4,204.40		
Gross Tax	€350.37 @ 20% = €441.30 @ 40% =	€70.07 <u>€176.52</u> €246.59	€4,204.40 @ 20% = €5,295.60 @ 40% =	€840.88 <u>€2,118.24</u> €2,959.12
Less tax credits	<u>€70.08</u>	<u>€840.88</u>		
Tax payable	€176.51	€2,118.24		

It can be seen from this example that Mary's annual income tax liability is €2,118.24 which equates to 40% of the amount of income which exceeds the age exemption limit (i.e. €23,295.60 - €18,000 = €5,295.60 @ 40% = €2,118.24).

However, if Mary's tax liability was calculated using the SRCP and tax credits that apply to a single person we can see in the following example that marginal relief is not always more favourable.

Example 20

Using the same personal information and income for Mary as stated in Example 19, calculate Mary's monthly and annual income tax liability as it would appear on the records of the pension company assuming Revenue issued an RPN stating the following SRCOP, tax credits and tax rates:

	SRCP	Tax Credits
Single person	€40,000.00	€1,775.00
PAYE		€1,775.00
Age		<u>€245.00</u>
Total	<u>€40,000.00</u>	€3,795.00

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<i>Less DSP pension</i>	<u>€13,795.60</u>	@ 20% = <u>€2,759.12</u>
<i>Annual amount appearing on RPN</i>	<u>€26,204.40</u>	<u>€1,035.88</u>

Tax Rate 1: 20% Tax Rate 2: 40%

Solution 20	Monthly	Annual
Income	€791.67	€9,500.00
SRCP	€2,183.70	€26,204.40
Gross tax	€791.67 @ 20% =	€158.33
Less tax credits		€9,500 @ 20% =
Tax payable	€86.33	€1,900.00
	€72.00	€1,035.88
		€864.12

By using the standard method of calculation, Mary's annual income tax liability is only €864.12 in comparison to €2,118.24 arising due to the operation of the marginal relief. Where applicable, individuals should compare their tax liability under both methods and request the appropriate treatment from Revenue.

The following example illustrates where marginal relief may be more beneficial to the taxpayer.

Example 21

Niall and Carol are both 68 years of age. Niall has an income of €40,000, which includes his State pension and retirement pension. Carol has no income. They are entitled to the married couple and age tax credits. Calculate their joint income tax liability and illustrate if Marginal Relief applies.

Solution 21

<i>Joint Income</i>		<i>€40,000</i>
SRCP	<i>€49,000 + €0</i>	<i>€45,800</i>
Gross tax	<i>€40,000 @ 20% =</i>	<i>€8,000</i>
<i>Less Tax Credits</i>		
	<i>Married couple</i>	<i>€3,550</i>
	<i>PAYE tax credit</i>	<i>€1,775</i>
	<i>Age tax credit</i>	<i>€490</i>
<i>Net income tax liability</i>		<i>€5,815</i>
		<i>€2,185</i>

Marginal Relief

<i>Tax restricted to</i>	<i>40% x (€40,000 - €36,000) =</i>	<i>€1,600</i>
<i>Refund of tax due under marginal relief:</i>	<i>€2,185 - €1,600 =</i>	<i>€585</i>

Marginal relief reduces the tax liability in the above example. The tax liability as calculated using the normal method is €2,185. By Marginal Relief the income tax liability is restricted to €1,600, giving rise to a tax refund of €585.

Example 22

Simon and Sonya are married. Simon is aged 65 and Sonya is aged 60. They have 4 qualifying children. Simon earns €20,000 and Sonya earns €19,000 per year. Calculate their annual tax liability based on:

- (a) A SRCOP of €68,000 ($\text{€49,000} + \text{€19,000}$) and tax credits of €7,590 (Married couple, PAYE x 2, and Age tax credits)
- (b) Marginal relief.

Solution 22(a)

Income		€39,000
SRCOP		€68,000
Gross Tax:	€39,000 @ 20% =	€7,800
Less tax credits:		€7,590
Tax payable:		€210

Solution 22(b)

Age Exemption Limit	Standard married exemption limit	€36,000
	First 2 qualifying children €575 x 2 =	€1,150
	Third & fourth qualifying children €830 x 2 =	€1,660
	Total	€38,810

Marginal Relief: Tax restricted to 40% x (€39,000 - €38,810) = €76

In this example marginal relief results in a tax saving of €134 (€210 - €76) for Simon and Sonya.

As mentioned previously, marginal relief is only applicable in a minority of cases. It should be noted that occasionally Revenue issue Tax Credit Certificates to employees to facilitate marginal relief and they are of no benefit to the individual, as the individual would pay less tax if he received a Tax Credit Certificate containing his normal SRCOP and tax credit entitlement.

Age Exemption and Marginal Relief only applies to income tax and has no impact on the individual's liability to USC or PRSI.

10. Key Employees engaged in Research & Development

A Research and Development (R&D) tax credit is available to companies who incur expenditure on research and development. This allows companies to claim a tax credit of 25% of qualifying expenditure on research and development which can then be offset against the Company's corporation tax liability. Where a company is in a position to offset their R&D tax credit against their corporation tax liability, the company has the option of surrendering its R&D credit to reward "key employees" who work in R&D.⁹

A key employee is an individual who:

- Is not, or has not been, a director of the Company,
- Does not hold, or has not held, more than 5% of the ordinary share capital of the Company,
- Performs 50% or more of his employment duties in the area of research and development and 50% or more of his wages would qualify as expenditure on research and development.

Where an employer surrenders the credit in respect of an employee, the employee can claim the amount surrendered as a reduction in his pay to the extent that the amount of income tax payable on his total annual income is not less than 23%. Where the relief is not fully claimed in a tax year, it can be carried forward to a future tax year until it is utilised, or until the employee ceases employment if earlier.

⁹ Taxes Consolidation Act 1997, Section 472D

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With regard to married couples or civil partnerships, the joint income tax liability cannot be less than 23% where this relief is claimed. Any excess credit can be carried forward to future years by the employee until it is fully used up or until the individual ceases to be an employee of that employer, if earlier.

The amount of the credit surrendered by the employer to the employee is exempt from income tax in the hands of the employee. An individual is required to file a self-assessment tax return in order to claim this relief. Where a key employee claims a refund from Revenue and it is subsequently found that it was not due (e.g. where the company incorrectly calculated its R&D tax credit), Revenue will not look to recover the underpayment of tax from the employee.

This relief only applies to income tax and does not apply to USC or PRSI.

Example 23

Sandra is employed by R&D Ltd and earns €75,000 per year. Sandra is a single person with a SRCOP and tax credits of €40,000 and €3,550 respectively. Her employer has surrendered €5,000 of R&D tax credits in her favour. Calculate her annual tax liability to include the R&D tax credit.

Solution 23

<i>Income</i>		<i>€75,000</i>
<i>SRCP</i>		<i>€40,000</i>
<i>Gross Tax</i>	<i>€40,000 @ 20% =</i>	<i>€8,000</i>
	<i>€35,000 @ 40% =</i>	<i><u>€14,000</u></i>
<i>Less tax credits</i>		<i>€22,000</i>
		<i><u>€3,550</u></i>
<i>Net tax liability</i>		<i>€18,450</i>
<i>Minimum 23% tax</i>	<i>€75,000 @ 23% =</i>	<i><u>€17,250</u></i>
<i>Refund Due (R&D credit utilised)</i>		<i>€1,200</i>
<i>R&D credit available</i>		<i>€5,000</i>
<i>Amount utilised this year</i>		<i><u>€1,200</u></i>
<i>Amount of relief carried forward to future years</i>		<i>€3,800</i>

11. Tax Relief on Lump Sum Payments due to Changes in Employment

Tax relief is available to certain full-time employees who receive certain payments which are liable to Income Tax.¹⁰ The relief applies to payments which compensate employees for a reduction or possible reduction of future remuneration arising from:

- A reorganisation of the employer's business, or
- A change in work procedures, methods, duties or rates of remuneration, or
- A change in the place where the duties of the office or employment are performed.

This relief would most frequently apply to a lump sum payment (commonly referred to as disturbance money) received by an employee due to a change of location where the duties of the employment are performed or where the employee receives a lump sum payment where he agrees to a future reduction in wages. This relief does not apply to any payment which qualifies for tax relief under the rules which apply to termination payments (i.e. it does not apply to the taxable element of a termination payment).

¹⁰ Taxes Consolidation Act 1997, Section 480

This relief is not available to the following categories of employees:

- A proprietary director / employee (i.e. a person who owns or controls, directly or indirectly, more than 15% of the shareholding of the company).
- Part time director or employee (i.e. a person who works on a part time basis with the company).

Where an employee receives a lump sum payment to which this relief applies, the employee is entitled to have his tax liability for that year recalculated as:

- The tax liability that would have arisen had such a payment not been received, plus
- The tax arising on the payment calculated using a special rate.

The special rate to be applied to the payment is computed by calculating the additional tax that results from including only 1/3rd of the payment in the employee's income. This amount is then divided by 1/3rd of the lump sum payment to obtain the percentage rate to be used in calculating the tax on this lump sum payment.

The relief applies to a lump sum payment which straddles the 20%/40% tax rate bands. This section does not generate any relief to an employee who received a lump sum payment which was fully taxable at 20%, nor does it apply to an employee who was already paying tax at 40% prior to receiving the lump sum payment.

If 1/3rd or more of the lump sum payment falls into the 20% tax band, the entire payment will be taxed at 20%. This would result in a refund due to the employee of 20% (40% - 20%) of the amount of the lump sum payment which exceeds the employee's SRCOP.

If less than 1/3rd of the lump sum payment falls into the 20% tax band, part of the payment will be taxable at 20% and part will be taxable at 40%. The lump sum payment will be taxed at a rate somewhere between 20% and 40%, thus the amount of the refund due to the employee will be reduced. The following examples best explain the relief.

Example 24

John is single and employed by MFG Ltd. He earns a salary of €35,000 per year. The company have decided to relocate to a larger factory which is located 50 kilometres from their current premises. The company paid John a disturbance payment €6,000. Calculate the tax due on the disturbance payment and state whether John can claim any tax relief on this payment.

Solution 24

The following table shows the tax payable by John if no lump sum payment was received (Column 1), the tax due if the full lump sum was taxed as normal through payroll (Column 2), and the tax due if only 1/3rd of the lump sum is included (Column 3).

	Column 1 – No Lump Sum	Column 2 – Full Lump Sum Added	Column 3 – 1/3rd of Lump Sum Added
Salary	€35,000	€35,000	€35,000
Additional Sum			
Full amount		€6,000	
1/3 rd of the amount	-	-	€2,000
	€35,000	€41,000	€37,000

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<i>Tax Due</i>			
Tax due @ 20%	€7,000	€8,000	€7,400
Balance @ 40%	<u>—</u>	<u>€400</u>	<u>—</u>
	€7,000	€8,400	€7,400
Less tax credits	(€3,550)	(€3,550)	(€3,550)
Tax Liability	€3,450	€4,850	€3,850

MFG Ltd. is required to tax the full disturbance payment through payroll in addition to his salary, which would result in John having an annual tax liability of €4,850.

Following the end of the tax year, John can submit a claim for tax relief on the disturbance payment which Revenue would calculate as follows:

The additional tax due by including 1/3rd of the lump sum in the total income for the year is €400 (i.e. €3,850 – €3,450).

The special rate is computed by taking the additional income tax of €400 and dividing it by 1/3rd of the lump sum, giving a rate of 20% (i.e. €400 / €2,000 x 100 = 20%).

As 1/3rd or more of the lump sum falls into the 20% tax band, the entire payment will be taxed @ 20% as follows:

Tax on lump sum €6,000 @ 20% =	€1,200
Tax on income excluding lump sum =	€3,450
Total tax due =	€4,650
Refund due: (€4,850 - €4,650) =	€200

Example 25

Following on from Example 24, the table below shows what the outcome would be if John earned an annual salary of €38,500.

	Column 1 – No Lump Sum	Column 2 – Full Lump Sum Added	Column 3 – 1/3rd of Lump Sum Added
Salary	€38,500	€38,500	€38,500
Additional Sum			
Full amount		€6,000	
1/3 rd of the amount	<u>—</u>	<u>—</u>	€2,000
	€38,500	€44,500	€40,500
Tax Due			
Tax due @ 20%	€7,700	€8,000	€8,000
Balance @ 40%	<u>—</u>	<u>€1,800</u>	<u>€200</u>
	€7,700	€9,800	€8,200
Less tax credits	(€3,550)	(€3,550)	(€3,550)
Tax liability	€4,150	€6,250	€4,650

MFG Ltd. is required to tax the full disturbance payment through payroll in addition to his salary, which would result in John having an annual tax liability of €6,250.

Following the end of the tax year, John can submit a claim for tax relief on the disturbance payment which Revenue would calculate as follows:

The additional tax due by including 1/3rd of the lump sum in the total income for the year is €500 (i.e. €4,650 – €4,150).

The special rate is computed by taking the additional income tax of €500 and dividing it by 1/3rd of the lump sum, giving a rate of 25% (i.e. €500 / €2,000 x 100 = 25%).

Tax on lump sum €6,000 @ 25% =	€1,500
Tax on income excluding lump sum =	€4,150
Total tax due =	€5,650
Refund due: (€6,250 - €5,650) =	€600

If John's income excluding the lump sum already exceeded his SRCOP, no relief would be due under this provision.

The relief is only available where an employee submits a claim to Revenue after the end of the year in which the payment was made.

12. Tax Treatment of Personal Injury Compensation Payments

Total exemption from income tax is available where an individual receives a personal injury compensation payment or income arising from the investment of a personal injury compensation payment provided the following conditions are met:¹¹

- The compensation must be for a personal injury.
- Payment must have arisen from:
- A civil action for damages in the Courts to include where a civil action is initiated but is settled "out of court",
- An order to pay under the Personal Injuries Assessment Board Acts 2003 to 2019, and
- Payment awarded by the Criminal Injuries Compensation Tribunal.
- The individual in receipt of the compensation payment must, as a result of the injury, be permanently and totally incapacitated either physically or mentally from maintaining themselves.
- The income obtained from the investment of the compensation must be the individual's sole or main source of income.

The following compensation payments do not qualify for exemption from income tax:

- Compensation payments for minor injuries.
- Compensation payments to an individual whose injury causes permanent incapacity but does not prevent the individual from maintaining themselves.

The individual should contact Revenue via MyEnquiries explaining the situation and enclosing a medical certificate stating the cause, nature and extent of the incapacity and the date the injury was incurred together with evidence that the payments arose from a civil action for damages, etc.

¹¹ Taxes Consolidation Act 1997, Section 189

Assessable Spouse Election Form

[Form to be sent to the local Revenue office dealing with the individual who is to be the assessable spouse]

Own Name:	<input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px;" type="text"/>	Own PPS Number:	<input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px;" type="text"/>
Spouse's Name:	<input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px;" type="text"/>	Spouse's PPS Number:	<input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px;" type="text"/>
Address:	<input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px;" type="text"/>		
	Date of Marriage: <input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px; text-align: center; font-family: monospace; font-size: small;" type="text"/> D D M M Y Y Y Y		
Estimated income for the current tax year		Self	Spouse
		<input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px; text-align: right; padding-right: 20px;" type="text"/> € [] , [] . [] 0 0	<input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px; text-align: right; padding-right: 20px;" type="text"/> € [] , [] . [] 0 0
(a) We hereby jointly elect that is to be the assessable spouse for the tax year (enter tax year) <input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px; text-align: center; font-family: monospace; font-size: small;" type="text"/> Y Y Y Y e.g. 2011 and later years.			
(b) We request that our tax credits and standard rate band be allocated as follows:			
Tax Credits		Standard Rate Band	
Assessable Spouse	Spouse	Assessable Spouse	Spouse
<input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px; text-align: right; padding-right: 20px;" type="text"/> € [] , [] . [] 0 0	<input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px; text-align: right; padding-right: 20px;" type="text"/> € [] , [] . [] 0 0	<input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px; text-align: right; padding-right: 20px;" type="text"/> € [] , [] . [] 0 0	<input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px; text-align: right; padding-right: 20px;" type="text"/> € [] , [] . [] 0 0
or			
If you are already being taxed as a married couple and wish to have your tax credits and standard rate band allocated as at present, please tick this box <input type="checkbox"/>			
or			
If you wish to have your tax credits and standard rate band divided equally between you, please tick this box <input type="checkbox"/>			
or			
If you wish to have transferable tax credits and standard rate band allocated to the assessable spouse, please tick this box <input type="checkbox"/>			
Signed: <input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px;" type="text"/> (Self)		Signed: <input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px;" type="text"/> (Spouse)	
Date: <input style="width: 100%; height: 1.2em; border: 1px solid black; margin-bottom: 5px; text-align: center; font-family: monospace; font-size: small;" type="text"/> D D M M Y Y Y Y			

CHAPTER 8

Pay for Tax Purposes

- 1. Payments Regarded as Pay for Tax Purposes**
 - 2. Payments Not Regarded as Pay for Tax Purposes**
 - 3. Advance Payments and Holiday Pay**
 - 4. Payment Due to Illness**
 - 5. Payments Without Deduction of Income Tax**
 - 6. Payments Made After Date of Cessation**
 - 7. Tax Refunds When Unemployed**
 - 8. Recovery of Overpayment of Wages**
 - 9. Basis of Assessment for PAYE Income**
-

1. Payments Regarded as Pay for Tax Purposes

The following payments are all regarded as pay for Income Tax purposes which is collected under the PAYE system. They are also liable to PRSI and USC.

1.1 Salaries and Wages, Directors' Fees, Commissions, Pensions

Salaries, wages, holiday pay, commissions, bonuses, etc. are all subject to Income Tax, PRSI and USC under the PAYE system when paid. Directors' fees, including fees paid to a non-executive director, is income from an office holding which is taxable under the PAYE system. Pension payments are liable to Income Tax and USC under the PAYE system but are exempt from PRSI.

1.2 Round Sum Allowances

All round sum allowances paid to employees such as car allowances, clothing allowances, home telephone allowances, travelling allowances, etc. are subject to tax, PRSI and USC. A round sum allowance is a round sum, which is paid periodically i.e. per week, per month, per year, etc. This does not include the reimbursement of expenses actually incurred in the employment or payment of Revenue approved motor travel or subsistence rates.

1.3 DSP Benefits and Pensions

The majority of payments made by the Department of Social Protection (DSP) such as Widow's, Widower's or Surviving Civil Partner's Pension, State Pension (Contributory), Invalidity Pension, Maternity Benefit, Adoptive Benefit, Health & Safety Benefit, Paternity Benefit, Parent's Benefit, Illness Benefit and Injury Benefit, Jobseeker's Benefit, etc. are taxable under Schedule E.

Revenue issues a PAYE Exclusion Order to the DSP which means that tax is not deducted at source by the DSP under the PAYE system. Instead, the tax due on these payments is collected by Revenue by reducing the individual's SRCOP by the amount of the taxable benefit or pension and by reducing his tax credits by 20% of the taxable benefit or pension. If the DSP benefit or pension is the individual's only source of income, it is likely that the individual will not incur a

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tax liability as the individual's tax credits may be sufficient to offset against the tax liability arising. However, if the individual has other sources of income, he will have a reduced amount of SRCOP and tax credits to offset against this other income.

1.4 Benefits in Kind (BIK)

Benefits, received by an employee, which have a monetary value, such as the private use of a company car, or the payment of medical insurance premiums are taxable. Employers are obliged to:

- Identify any BIK which an employee receives,
- Quantify the value of any such benefit, and
- Collect tax, PRSI and USC due on the BIK under the PAYE system.

It should be noted that certain BIKs are exempt from Income tax, PRSI and USC.

1.5 Payments Credited to an Employee's Account

Where an employer makes a payment to an employee's bank account or to a third party on behalf of an employee, for example, where an employer pays an employee's private bill, this is a taxable payment. If the employer is prepared to pay the Tax, PRSI and USC due, on behalf of the employee, it should be calculated on the re-grossed amount, which, after deduction of the relevant Tax, PRSI and USC, amounts to the net payment made.

1.6 Inducement Payments

Payments made to an individual, which are deemed to be an inducement to take up employment with a new employer, are subject to Tax, PRSI and USC through payroll, even where the individual is not an employee at the time of the payment, but subsequently becomes an employee.

1.7 Recruitment Fee/Referral Bonus

Many employers offer a payment to current employees if they successfully locate new members of staff through their friends or contacts. Any recruitment fee paid to an employee is taxable and therefore should be included as part of the employee's pay when calculating Income Tax, PRSI and USC.

1.8 Payment in Lieu of Notice

Employers are required to state the period of notice an employee is entitled to receive from his employer before his employment is terminated.¹ The employer is obliged to pay the employee his wages or salary, during the period of notice, that is, during the period between the time the employee has been notified that his employment is being terminated and the actual date of termination. However, some employers will pay an employee in lieu of the wages or salary he would have earned during the notice period, rather than have the employee on the premises during this period. This is known as a payment in lieu of notice.

Where an employee's contract of employment provides for a payment in lieu of notice, Revenue regards such a payment as being a taxable payment.

Where an employee's contract of employment does not provide for a payment in lieu of notice, and an employee is paid in lieu of working out his notice, such payments are regarded as falling

¹ Terms of Employment (Information) Acts 1994 to 2014, Section 3.

within the Income tax rules which apply to termination payments. These rules are covered in detail in the chapter entitled “Termination Payments”.

2. Payments Not Regarded as Pay for Tax Purposes

The following payments are not regarded as pay for income tax purposes and as such are not subject to tax under the PAYE System.

2.1 Reimbursement of Expenses

Where an employer reimburses an employee for expenses actually incurred in the performance of his duties, or paid on behalf of his employer, the reimbursement of such expenses incurred are not taxable. An example of this is where an employee paid a taxi fare which he incurred on a business journey to a client meeting and was then reimbursed by the employer for the actual fare paid. Receipts should be obtained from the employee to verify such expenses and should be retained by the employer as part of his tax records.

2.2 Travel and Subsistence Rates

An employee, who is required to use his private car while on company business, can receive a tax free travel rate from his employer subject to certain conditions. Revenue has approved travel rates based on the engine size of the car and the distance travelled on business journeys during the year, known as Civil Service travel rates. Revenue has also approved subsistence rates to cover the cost of meals and/or accommodation which may be paid to an employee who is obliged to carry out the duties of his employment while temporarily away from his normal place of work. Any payment made to an employee which does not exceed the Civil Service rates can be made tax free. Where the payment exceeds the Civil Service rates, the excess amount is taxable. This is covered in detail in the chapter entitled “Expenses and Tax Free Payments”.

2.3 Refund of Pension Contributions

On leaving employment, an employee may be entitled to a refund of his contributions made to the employer’s occupational pension scheme where the employee was a member of the pension scheme for less than 2 years. Refunds of an employee’s pension contributions, while taxable, are not subject to PRSI and USC. The 20% withholding tax due on a refund of pension contributions is collected outside the PAYE system. It is paid directly to Revenue by the administrator of the pension scheme. As such, neither the refund of pension contributions, nor the withholding tax, should be reported to Revenue on a Payroll Submission.

Where an error occurs in the calculation of an employee’s pension contribution (e.g. where the employee contribution was over deducted in a previous pay period), as this is simply the correction of an error it can be rectified through payroll by reducing future contributions due by the employee. This type of correction is not considered as a refund of pension contributions.

2.4 Statutory Redundancy

Statutory redundancy payments paid by an employer are not regarded as pay for tax purposes and do not give rise to Income tax, PRSI or USC liabilities.

2.5 Certain Lump Sum Payments made on Termination of Employment

An employer may pay a lump sum termination payment (excluding any statutory redundancy payment) to an employee on cessation of employment. Where the amount of any lump sum termination payment does not exceed the exemption limits allowed by Revenue, it can be paid tax free.

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Any excess amount over the exemption limits is liable to Income Tax and USC but is not liable to PRSI. Termination payments are covered in detail in the chapter entitled “**Termination Payments**”.

3. Advance Payments and Holiday Pay

Payments made in advance are treated as pay for Income tax, PRSI and USC purposes and are subject to income tax in the week, or month, in which they are paid, whether the employee is subject to tax on the Cumulative, Week 1 or Emergency Basis.

However, as an exception to this rule, where an employee is paid holiday pay in advance of annual leave, the tax credits, SRCOP and USC COPs for the period(s) for which he is being paid in advance may be used in calculating the tax and USC payable. The employee is also entitled to PRSI thresholds for the same period(s). For example, if an employee is going on two weeks holiday in week 20 and he is being paid holiday pay in advance for weeks 21 and 22, his tax and USC liabilities in week 20 can be based on his tax credits, SRCOP and USC COPs up to week 22. The employee is entitled to receive 3 PRSI contribution weeks (week 20 to week 22) and the benefit of 3 weekly PRSI thresholds.

Note: this concession only applies where the employee intends to return to work after his holidays.

Example 1

Ciara earns €1,200 per week. She is taking 1 week of annual leave and her employer is going to pay her holiday pay in advance, thus she will receive a total payment of €2,400 this week. Ciara has a weekly tax credit and SRCOP of €68.27 and €769.24 respectively and the standard USC COPs. Calculate her Income Tax, PRSI and USC liabilities for this week assuming she is subject to tax and USC on the Week 1 Basis.

Solution 1

Salary (1 week)		€1,200.00
Holiday Pay (1 week)		€1,200.00
Total payment for 2 weeks		€2,400.00
SRCP	€769.24 x 2 weeks =	€1,538.48
Gross tax	€1,538.48 @ 20% =	€307.69
	€861.52 @ 40% =	€344.60
		€652.29
Less tax credits	€68.27 x 2 weeks =	€136.54
Income Tax liability		€515.75
PRSI (2 contribution weeks)	€2,400 @ 4% =	€96.00
Income up to Rate 1 COP	€231 x 2 = €462.00 @ 0.5% =	€2.31
Excess pay up to Rate 2 COP	€209.77 x 2 = €419.54 @ 2% =	€8.39
Balance of pay at Rate 3	€1,518.46 @ 4.5% =	€68.33
USC liability		€79.03

If an employee is ceasing his employment and receives holiday pay due to him on cessation, his tax credits, SRCOP and USC COPs are granted for the pay period in which the payment is made.

However, for PRSI purposes, the employee is entitled to a PRSI contribution for each week, or part of a week, for which he receives holiday pay, on leaving his employment.

For example, a weekly paid employee leaves employment in week 26 and is due to be paid his salary in week 26 plus 2 weeks' pay in respect of accrued holidays. The employer should calculate the employee's tax and USC using the tax credits, SRCOP and USC COPs up to week 26 inclusive. However, PRSI should be calculated on the basis of 3 insurable weeks.

Example 2

Cara earns €1,200 per week. She is leaving her employment this week and will receive payment for her final weekly payment plus she has accrued 1 week of annual leave which will be paid on cessation. Cara will receive a total payment of €2,400 this week. Cara has a weekly tax credit and SRCOP of €68.27 and €769.24 respectively and the normal USC COPs. Calculate her Income Tax, PRSI and USC liabilities for her final week assuming she is subject to tax and USC on the Week 1 Basis.

Solution 2

Salary (1 week)		€1,200.00
Accrued holiday pay (1 week)		€1,200.00
Total payment		€2,400.00
 SRCOP		
Gross tax	€769.24 @ 20% =	€153.84
	€1,630.76 @ 40% =	€652.30
		€806.14
Less tax credits		€68.27
Income Tax liability		€737.87
 PRSI (2 contribution weeks)	€2,400 @ 4% =	€96.00
Income up to Rate 1 COP	€231 @ 0.5% =	€1.15
Excess pay up to Rate 2 COP	€209.77 @ 2% =	€4.19
Balance of pay at Rate 3	€906.23 @ 4.5% =	€40.78
Balance	€1,053 @ 8% =	€84.24
USC liability		€130.36

4. Payment Due to Illness

Any payments, including Statutory Sick Pay (SSP), made to an employee when absent from work due to illness are deemed to be pay for Income Tax, PRSI and USC purposes. If the employee receives Illness Benefit or Injury Benefit from the DSP while absent on sick leave, these amounts are also subject to income tax which is collected by Revenue via an adjustment to the employee's SRCOP and tax credits. There is no general legislative provision governing the payment of 'sick pay' by an employer. Any such payment is at the employer's discretion, unless it is a term of the employee's contract of employment or collective agreement. Any payment made by the employer due to illness, does not affect the employee's entitlement to claim Illness Benefit.

5. Payments Without Deduction of Income Tax

Any payments made by an employer to an employee are subject to Income Tax, PRSI and USC except where otherwise advised by Revenue. Where an employer pays an employee a "tax free"

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payment, the amount of pay for Income Tax, PRSI and USC purposes is the re-grossed amount i.e. the amount which after deduction of Tax, PRSI and USC would give the net amount actually paid to the employee.

Example 3

John Byrne has been promised a €500 bonus payment “free of income tax” by his employer. John’s gross earnings have exceeded his cumulative SRCOP and his bonus payment will be taxable at the higher rate of 40%. It will also be liable to 4% PRSI and 8% USC. It is not sufficient for the employer to pay 40% tax, 4% PRSI and 8% USC on the €500. Instead the €500 must be re-grossed to find the correct gross figure for tax, PRSI and USC purposes. The employer must then pay this new figure, which after deducting Income Tax, PRSI and USC, will give a net figure of €500. See the following calculations, which illustrate this point.

Solution 3

For the current tax year, a net payment of €500, for a 40% taxpayer, after deduction of 52% (40% Income Tax + 4% PRSI + 8% USC) is re-grossed as follows:

€500 divided by 48%	(100% - 52%)	€1,041.66
Less: Income Tax @ 40%	€1,041.66 @ 40% =	€416.66
PRSI @ 4%	€1,041.66 @ 4% =	€41.67
USC @ 8%	€1,041.66 @ 8% =	€83.33
Net payment:		€500.00
Gross payment to employee		€1,041.66
Employer PRSI	€1,041.66 @ 11.05% =	€115.10
Total cost to employer		€1,156.76

It can be seen therefore that rather than pay tax of €200 (€500 @ 40%) on a payment of €500, the employer must pay Income Tax of €416.66, PRSI of €41.67 and USC of €83.33 on a gross payment of €1,041.66, in order to give his employee a €500 payment “free of income tax”. The employer also incurs the additional cost of €115.10 in Employer PRSI.

In the above example, it is assumed that the employee has already used his tax credits, SRCOP and USC COPs for the period, resulting in an overall cost to the employer (including employer PRSI) of approximately 231% of the net payment.

Example 4

For the current tax year, a net payment of €500, for a 20% taxpayer, after deduction of 28.5% (20% Income Tax + 4% PRSI + 4.5% USC) is re-grossed as follows:

€500 divided by 71.5%	(100% - 28.5%)	€699.30
Less: Income Tax @ 20%	€699.30 @ 20% =	€139.86
PRSI @ 4%	€699.30 @ 4% =	€27.97
USC @ 4.5%	€699.30 @ 4.5% =	€31.47
Net payment:		€500.00
Gross payment to employee		€699.30
Employer PRSI	€699.30 @ 11.05% =	€77.27
Total cost to employer		€776.57

In the above example, it is assumed that the employee has already used his tax credits and USC Rate 1 and Rate 2 COPs for the period but is only liable to tax at 20% and USC at 4.5%, resulting in an overall cost to the employer (including employer PRSI) of approximately 155% of the net payment.

When carrying out PAYE Compliance Interventions, if Revenue find that an employer is making payments without deduction of tax which do not qualify to be made tax free or is otherwise disguising such payments in his books and records, Revenue will recoup the liabilities due on those payments on a re-grossed basis in a similar manner to the calculations as outlined above.

6. Payments Made after Date of Cessation

A payment made after the date of cessation (e.g. holiday pay, bonus, commission, etc.) which was not included in the final Payroll Submission when an employment ceased, should be dealt with for tax, PRSI and USC purposes at the time the payment is made.

Where a payment is being made to an employee who has ceased employment, an employer should request an RPN for the individual. As this is not a new employment the request for the RPN should be made under the existing payroll record (Employment ID) for that employee. Where the post cessation payment is being made in a subsequent tax year, the employee's start date should be omitted from the RPN request.

If the individual has no other employment then the RPN may contain tax credits, SRCOP and USC COPs. However, if the individual has another employment, the RPN will be issued with no tax credits, SRCOP or USC COPs which will result in tax and USC being deducted at the highest rates (i.e. 40% tax and 8% USC). Either way, where an RPN is received the employer must operate tax and USC based on the figures contained in the RPN.

Where an RPN is not made available, income tax and USC should be deducted at the highest rates. A post cessation payment should be recorded in a Payroll Submission for the pay period in which it is made. The Payroll Submission should include the date the payment is made and the original cessation date.

6.1 Payments made to the Estate of a Deceased Employee

Where an employee dies while in employment and a payment is due to him following his death, the payment should be made payable to the estate of the deceased employee. Payments should be taxed based on the latest RPN issued by Revenue.

6.2 Employee retiring on a Pension paid by the Employer

Where the employer has a single employer registration number for both employees and pensioners and an employee retires on a pension, the retired employee should not be treated as having left employment if the pension is paid from the same employer registration number, and therefore there is no requirement to include a leave date on the Payroll Submission. If an employee is changing from a salary payment to a pension payment, the individual should be changed to PRSI Class M, as pension payments are not liable to employee or employer PRSI.

If the individual was in receipt of both a pension and a salary payment from the same employer registration number, it is possible to record 2 PRSI classes on the same payslip (the pension is liable to PRSI Class M and the salary is liable to PRSI Class A or J depending on the individual's age). Alternatively, the employer could set up a new Employment ID for the pension payment to

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distinguish between the employment income and the pension income. The employee may then decide to re-allocate his tax credits, SRCOP and USC COPs between both sources of income.

If an employee retires before turning 66, he may be entitled to make a claim for Jobseekers Benefit from the DSP in addition to receiving a pension from his employer. The employer should provide the employee with a letter confirming his retirement which can be presented by the employee to the DSP when making his claim for Jobseeker's Benefit.

6.3 Employee Retiring on a Pension paid by a Pension Provider

Where an employee ceases employment and retires on a pension paid by another organisation, such as an insurance company, or under a separate employer registration number, the employer must include a leave date for the employee on the final Payroll Submission.

The organisation paying his pension should set him up on their payroll and request an RPN for him to commence him as a pensioner under their employer registration number.

7. Tax Refunds when Unemployed

If an individual is unemployed for a period of at least 4 weeks he may claim a repayment of income tax and/or USC from Revenue, if due. This can be done by submitting an online unemployment repayment claim via MyAccount or by completing a Form P50 (*see copy at the end of this chapter*). Assuming the individual has previously paid income tax in the current tax year, a repayment of tax will arise in respect of the unused SRCOP and tax credits for the weeks in which he is not employed, as these can be offset against the year to date taxable income. In addition, a refund of USC may arise due to the individual's unused USC COPs being offset against the individual's year to date gross pay for USC purposes. If he has not paid any income tax or USC to date, he cannot receive any repayment, as there is nothing to repay.

Where the individual confirms that he is not returning to work before 31st December (e.g. in the case of students claiming a refund for summer employment or someone emigrating permanently), a once off refund (if due) will be processed in respect of tax and USC.

If the individual claims Jobseeker's Benefit, this is a taxable source of income and Revenue advise that the individual should wait for a period of 8 weeks before submitting the unemployment repayment claim. Where, an individual is in receipt of a taxable DSP payment such as Jobseeker's Benefit, a refund claim can be submitted to Revenue every 8 weeks. If the individual is not in receipt of any taxable DSP benefit, a refund claim can be submitted every 4 weeks. When the refund claim is processed, Revenue issue a letter to the individual advising the amount of the tax refund due and also the date after which a subsequent claim can be made if the person is still unemployed.

When the individual recommences employment, his employer can request an RPN to register the employment. Revenue will issue an up to date RPN with previous pay, tax and USC details assuming it is on the Cumulative Basis. The individual can also register his new employment online using the Jobs and Pensions Service in MyAccount.

8. Recovery of Overpayment of Wages

An overpayment of wages can occur in numerous different circumstances such as an employee being paid an incorrect amount, or an employee being paid an allowance or benefit that they are not entitled to, the employee was paid when absent on unpaid leave, etc. Regardless of the reason

for the overpayment, the question arises as to the tax implications for an employee where the overpayment is repaid to the employer.

In the event that an employee is overpaid, he will pay tax, USC and PRSI on whatever amount he is paid. There are no statutory rules as to how long an employee has to repay an overpayment to his employer, or at what rate it should be repaid. This is purely a matter between the employer and employee, but it is strongly recommended that employers clearly identify their policy in relation to recovering overpayments in the employee's written statement of terms of employment or staff handbook to avoid any problems occurring at a later date. It is not uncommon that where an overpayment relates to a single day (i.e. a day's pay) that it will automatically be recovered in the next pay period. Where the overpayment relates to a more significant amount an agreed repayment plan is put in process. The **Payment of Wages Act 1991** prevents an employee from taking a case against his employer where the employer makes a deduction to recover an overpayment of wages.

The treatment of a recovery of an overpayment of wages will depend on when the money is repaid to the employer as illustrated below.

8.1 Recovery in the Same Tax Year where Employee is still Employed

Where the recovery takes place in the same tax year that the overpayment occurred, the employer can reduce the employee's **gross** pay in a future pay period(s) by the **gross** amount of the overpayment. This will have the effect of correcting the employee's tax, USC and PRSI record in the current year.

Example 5

Paul earns a gross salary €800 per week. His cumulative pay, tax and USC to week 24 is €19,200.00, €2,349.16 and €516.36 respectively. It has come to light in week 25 that Paul was overpaid by 1 day (€160: €800 / 5 days) in week 24 which will be recovered from his wages in week 25. Paul is subject to tax and USC on the Cumulative Basis. His weekly tax credit and SRCOP is €68.27 and €769.24 respectively and he is entitled to the standard USC COPs. Calculate his net take home pay in week 25.

Solution 5

<i>Cumulative pay to date</i>		<i>€19,200.00</i>
<i>Pay for week 25</i>	<i>€800.00</i>	
<i>Less recovery of overpayment</i>	<i>€160.00</i>	<i>€640.00</i>
<i>Cumulative pay</i>		<i>€19,840.00</i>
<i>SRCP</i>	<i>€769.24 x 25 weeks =</i>	<i>€19,231.00</i>
<i>Gross tax</i>	<i>€19,231.00 @ 20% =</i>	<i>€3,846.20</i>
	<i>€609.00 @ 40% =</i>	<i><u>€243.60</u></i>
		<i>€4,089.80</i>
<i>Less tax credits</i>	<i>€68.27 x 25 weeks =</i>	<i>€1,706.75</i>
		<i>€2,383.05</i>
<i>Less tax previously paid</i>		<i><u>€2,349.16</u></i>
<i>Tax due</i>		<i>€33.89</i>
<i>EE PRSI</i>	<i>€640 @ 4% =</i>	<i>€25.60</i>

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<i>USC</i>		
<i>USC due at Rate 1</i>	$\text{€}231.00 \times 25 \text{ weeks} = \text{€}5,775.00 @ 0.5\% =$	$\text{€}28.87$
<i>USC due at Rate 2</i>	$\text{€}209.77 \times 25 \text{ weeks} = \text{€}5,244.25 @ 2\% =$	$\text{€}104.88$
<i>USC due at Rate 3</i>	$\text{€}8,820.75 @ 4.5\% =$	$\text{€}396.93$
		$\text{€}530.68$
<i>Less USC previously paid</i>		$\text{€}516.36$
<i>USC due</i>		$\text{€}14.32$

Calculation of Net Take Home Pay

<i>Gross Pay</i>		$\text{€}640.00$
<i>Less:</i>		
<i>Tax due</i>	$\text{€}33.89$	
<i>PRSI due</i>	$\text{€}25.60$	
<i>USC due</i>	$\text{€}14.32$	$\text{€}73.81$
<i>Net Take Home Pay</i>		$\text{€}566.19$

For comparison purposes, in week 24, based on a gross payment of €800, Paul would have received a net payment of €648.61 after statutory deductions. As a result of the recovery of the overpayment, Paul's net take home pay is reduced by €82.42 in week 25.

8.2 Recovery in the Same Tax Year following Cessation of Employment

If the employee has already left the employment it is not possible to recover the overpayment in a future pay period. Regardless of whether or not an overpayment was made, the employer is required to include a leave date on the Payroll Submission for that pay period in which the employee left. No adjustment to the employee's pay, tax, USC and PRSI should take place until the employer has recouped the overpayment from the employee.

In this situation Revenue advises that the former employee should be asked to repay the net amount directly to the employer. Once the net amount has been recovered from the employee, the employer should process a negative payment for the employee in the pay period the money is returned. The employer should record a negative gross pay, tax, USC and PRSI to reverse out the liabilities.

Note: a negative value cannot be recorded for LPT. The employer should not request a new RPN for the employee. The negative payslip should be recorded in a Payroll Submission for that pay period in which the recovery takes place. The negative payslip should be recorded under the same Employment ID number which was allocated to the employee when he was overpaid.

Example 6

Following on from the above example, Paul left his employment at the end of week 24 and was overpaid by €160. The overpayment comes to light several weeks later but within the same tax year. Paul should be requested to return the net amount of €82.40 (based on the fact that the €160 was liable to tax at 40%, PRSI at 4% and USC 4.5% when it was paid). Assuming Paul returned this amount in week 40, a negative payslip should be recorded in week 40 as follows:

<i>Gross pay</i>		$(\text{€}160.00)$
<i>Tax</i>	$\text{€}160 @ 40\% =$	$(\text{€}64.00)$
<i>PRSI</i>	$\text{€}160 @ 4\% =$	$(\text{€}6.40)$
<i>USC</i>	$\text{€}160 @ 4.5\% =$	$(\text{€}7.20)$
<i>Net pay</i>		$(\text{€}82.40)$
<i>ER PRSI</i>	$\text{€}160 @ 11.05\% =$	$(\text{€}17.68)$

The negative pay, tax, USC and PRSI should be included in the Payroll Submission for week 40.

8.3 Recovery in a Subsequent Tax Year

Where the recovery takes place in a subsequent tax year, Revenue advises that employers should recover the **gross** amount of the overpayment from the employee. Where the employee is still in employment the employer can deduct the gross amount of the overpayment from the employee's net take home pay (i.e. after calculation of statutory deductions) or where the employee has ceased employment the former employee should be asked to repay the gross amount directly to the employer.

When the gross amount has been recovered, the employer should then issue a statement to the employee giving details of the amount of the overpayment, the amount repaid by the employee and the tax year that the overpayment relates to. The employee can use this statement to claim a refund of tax and USC from Revenue. A copy of the statement can be uploaded to MyWelfare (or attached to a PRSI REF1 Form) to reclaim the overpayment of PRSI from the DSP.

Employers can complete a PRSI REF2 Form to reclaim the overpayment of employer PRSI. Where the employee is in agreement, the PRSI REF 2 Form can also be used to recover the overpayment of employee PRSI. In this instance a copy of the written agreement from the employee or former employee should be attached to the PRSI REF 2 Form.

Example 7

Following on from the above example, assuming the overpayment only comes to light following the end of the tax year, Paul should be requested to return the gross amount of €160. Once the employer has recovered this amount, he should issue a statement to the employee confirming that the amount of €160 has been recouped and indicate the year(s) that the overpayment took place.

8.4 Recovery Spanning a Number of Tax Years

The situations described in the above sections apply where an overpayment is recovered in the same or subsequent tax year. In certain situations the overpayment may be recovered over a number of years. This would depend on various factors such as the size of the overpayment, the personal circumstances of the employee or any time limits imposed by the employer.

Revenue will only grant a refund of any tax or USC when the overpayment relating to that year has been repaid regardless of the amount of time it takes to recover the overpayment. It should be noted that there is a statutory 4 year time limit for making a claim for repayment of tax, USC and PRSI. In 2023, a repayment of tax can be made for tax years 2019 to 2022.

If the overpayment is going to take a number of years to complete, Revenue has advised that employees can make a valid claim containing full details before the end of the 4 year period and inform them that the overpayment is going to take longer than 4 years. Once a valid claim has been received before the 4 year time limit, Revenue can make a refund when the overpayment is subsequently repaid even where this is outside the 4 year limit.

Example 8

Owen's employer has discovered that he has been in receipt of a travel allowance since 2019 which he was not entitled to be paid. From 2019 to the end of 2022, Owen has been overpaid by a gross amount of €10,000 (€2,500 per year). It has been agreed that he will repay €2,500 per year for the next 4 years commencing in January 2023.

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Owen is repaying the overpayment at a rate of €2,000 per year over 5 years. This will mean that the overpayment will not be repaid in full until 2027. If he does not make a valid claim to Revenue before the following dates, he risks going outside the 4 year time limit for claiming a refund of tax.

Year of Overpayment	Overpayment Amount	Latest Date to Make a Valid Claim
2019	€2,500	December 2023
2020	€2,500	December 2024
2021	€2,500	December 2025
2022	€2,500	December 2026

Provided he makes a valid claim containing full details before the above dates, Revenue will refund any tax and USC when the overpayment has been recovered even though it is outside the 4 year time limit.

This section deals with the recovery of an overpayment of wages from a tax, USC and PRSI perspective. Under the **Payment of Wages Act 1991**, an employee is prevented from taking a case against his employer where the employer merely recovers an overpayment of wages. In some cases though an employer may be prevented from recovering what he perceives to be an overpayment, especially if the payment has been made to the employee for a number of years. If the employer has any doubts as to whether he can recover an overpayment he should obtain legal advice in advance.

8.5 Payment Following the Death of an Employee

Where an overpayment has been made following the death of an employee and the payment is subsequently returned to the employer (e.g. a cheque is returned uncashed or a payment is returned from an executor of an estate), the employer should amend the original Payroll Submission to reverse out the overpayment of wages, income tax, USC and PRSI as applicable, regardless of whether the payment was made in the current tax year or an earlier tax year. The employer should use the original employment ID and should not request an RPN. The cessation date should refer to the date of death while the pay date should be amended to refer to the date the money was returned to the employer.

Where the overpayment relates to a number of pay periods, any adjustments in respect of the amount recouped should be applied to the most recent pay periods first.

9. Basis of Assessment for PAYE Income

Since 1st January 2018, the basis of assessment of PAYE income for the majority of PAYE taxpayers (e.g. employees and those in receipt of an occupational pension) has changed to a receipts basis (i.e. the income is assessable in the tax year in which the payment is made to the employee regardless of when it was earned).

This change in the basis of assessment has no major impact on payroll as tax is deducted under the PAYE system at the time the payment is made regardless of when it was earned. However, it should be borne in mind that if an employer makes a payment in December 2023 in respect of January 2024, the payment will be taxable in 2023, except where the normal pay day falls on the 1st January (a public holiday) and the payment is made available to the employee on the previous working day, in which case the payment will be treated as being made on 1st January.

Prior to 2018, PAYE income was assessable on an earnings basis (i.e. in the tax year in which it was earned) and this earnings basis continues to apply to proprietary directors (i.e. those who own or control, directly or indirectly, more than 15% of the ordinary share capital in the company) and to those in respect of whom Revenue has issued a PAYE Exclusion Order, which includes DSP payments. Again, this has no impact on payroll as income tax is deducted under the PAYE system when payments are made regardless of when they are earned.

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Form P50

FORM P50		FIRST CLAIM FOR A REPAYMENT OF INCOME TAX AND/OR UNIVERSAL SOCIAL CHARGE (USC) DURING UNEMPLOYMENT								
Please read the INFORMATION NOTES overleaf BEFORE completing this form. N.B. Form P45 Parts 2 & 3 MUST accompany this claim.										
Name and Address (include Eircode)				PPS Number						
<input type="text"/>				<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>						
Employer Number				<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>						
Date of Cessation of Employment		<input type="text"/> DD MM YY			Refer to your Form P45 for answers to above					
ALL SECTIONS AND THE DECLARATION MUST BE COMPLETED										
Details of income received by you since the date you became unemployed Insert <input checked="" type="checkbox"/> in appropriate box(es) below										
<input type="checkbox"/> Jobseeker's Benefit	<input type="checkbox"/> Other Income received from the Department of Social Protection									
<input type="checkbox"/> Illness Benefit	State payment type <input type="text"/>									
In the case of the above, state the date this income started <input type="text"/> DD MM YY										
Number of children included in your claim	<input type="text"/> <input type="text"/>	Gross weekly amount	<input type="text"/> €							
<input type="checkbox"/> Jobseeker's Assistance (this is not a taxable source of income)										
<input type="checkbox"/> Other Income not subject to PAYE	Gross amount received to date <input type="text"/> €									
State the source of this income <input type="text"/>										
Do you intend to resume employment in Ireland before 31 December next? Y/N <input type="checkbox"/>										
If the answer is "No", state reason <input type="text"/>										
If resuming education, state name of school/college <input type="text"/>										
Are you making this claim on the basis that you are going abroad? Y/N <input type="checkbox"/>										
If the answer is "Yes" state: (a) country of destination <input type="text"/> (b) intended departure date <input type="text"/> DD MM YY (c) duration of stay abroad <input type="text"/>										
Do you intend to take up employment abroad? Y/N <input type="checkbox"/>										
Address abroad for correspondence <input type="text"/>										
Refunds										
If you wish to have any refund paid directly to your bank account, please provide your bank account details. (Note: It is quicker to receive payments electronically than by cheque.)										
Single Euro Payments Area (SEPA)										
Account numbers and sort codes have been replaced by International Bank Account Numbers (IBAN) and Bank Identifier Codes (BIC). These numbers are generally available on your bank account statements. Further information on SEPA can be found on www.revenue.ie .										
It is not possible to make a refund directly to a foreign bank account that is not a member of SEPA.										
International Bank Account Number (IBAN) (Maximum 34 characters) <input type="text"/>										
Bank Identifier Code (BIC) (Maximum 11 characters) <input type="text"/>										
Note: Any subsequent Revenue refunds will be made to this bank account unless otherwise notified.										
I declare that I am unemployed and that all particulars given in this form are stated correctly										
Signature <input type="text"/>							Date: <input type="text"/> DD MM YY			
Telephone or E-mail: <input type="text"/>										
A person who knowingly makes a false statement for the purpose of obtaining repayment of income tax is liable to heavy penalties.										
RPC007010_EN_WB_L_1										

CHAPTER 9

Pensions and PRSAs

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1. Introduction

A pension scheme is a method of saving for retirement and is considered a long term investment. There are 3 main types of pension schemes generally available in Ireland:

- Company Pension Schemes (Occupational Pension Scheme)
- Personal Retirement Savings Accounts (PRSAs)
- Personal Pension Plans (Retirement Annuity Contracts)

2. Revenue Approval for Pension Schemes

A pension scheme, regardless of the type, must receive Revenue approval in order to qualify for the various tax benefits associated with pensions such as tax relief on pension contributions or a tax free lump sum on retirement.

In addition, an occupational pension scheme and PRSA must be approved by The Pensions Authority.

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3. Company Pension Schemes¹

A company pension scheme, also known as a superannuation scheme or an occupational pension scheme, is a pension scheme set up by an employer on behalf of the employees. Currently, an employer is not obliged to set up a company pension scheme for his employees. Where one is provided, contributions may be made by both the employer and the employee. The level of contributions depends on the particular scheme and is usually stated in the employee's terms of employment.

An employer can set up an occupational pension scheme regardless of the number of employees or the legal status of the employer. For example, a sole trader with 2 employees can set up an occupational pension scheme for the 2 employees. As the business owner is not an employee of the business he cannot be a member of the pension scheme. A business operating as a company can have an occupational pension scheme for all employees and directors including proprietary directors assuming such directors are in receipt of Schedule E income (i.e. in receipt of a salary or fees taxed through the PAYE system).

Pensionable salary is the part of an employee's salary on which his pension is calculated, which can vary between different employers. The usual starting point for calculating pensionable salary is an employee's basic salary which may include fixed allowances, but it generally does not include overtime, commissions, bonuses, etc.

A company pension scheme can be a Defined Benefit scheme, a Defined Contribution scheme or a Hybrid scheme.

3.1 Defined Benefit Schemes

A Defined Benefit scheme, also known as a final salary scheme, is a pension scheme where the benefits to the employee are clearly defined, usually based on the length of service of the employee and the employee's final pensionable salary at retirement age. A full pension is generally subject to a maximum of 2/3^{rds} (40/60^{ths}) of an employee's final pensionable salary (e.g. number of years' service divided by 60 and the result multiplied by the individual's pensionable salary at retirement). It is generally a requirement that both the employer and the employee contribute to a Defined Benefit scheme. This type of scheme has an advantage for employees in that the pension is more certain (i.e. based on years' service). However, the disadvantage for employers is the cost of funding the scheme especially as people now live longer in retirement and thus are in receipt of a pension for longer.

Many Defined Benefit schemes make an allowance for the State Pension (Contributory) in which case the basic salary may be reduced by the State Pension (Contributory) or a multiple of the State Pension (Contributory) to arrive at the pensionable salary.

Public and Civil Service pension schemes are a prime example of a Defined Benefit scheme based on final pensionable salary. However, a new Single Public Service Pension scheme was introduced and applies to new entrants into the public service since 1st January 2013. The pension entitlement accruing from this scheme is based on the employee's career average earnings as opposed to the employee's final salary.

Very few employers currently offer a Defined Benefit scheme to new employees due to the high cost to the employer of funding them. Additionally, many employers who previously had Defined

¹ Taxes Consolidation Act 1997, Sections 770 to 782

Benefit schemes have ceased to fund them and have switched employees to Defined Contribution schemes.

Example 1

Pat Kelly is entitled to a pension of 1/60th of his final pensionable salary for every year of service with his employer. He is due to retire this year after 32 years' service and his final pensionable salary is €50,000 per year. What will the value of his pension be?

Solution 1

Years of service, divided by 60 and multiply the result by his final pensionable salary:

$$(32 / 60) \times €50,000 = €26,667 \text{ per year.}$$

3.2 Defined Contribution Schemes

A Defined Contribution scheme is one in which only the contributions to the scheme are specified or defined at the time of contribution. The employee's pension entitlement will be determined by the value of the employee's pension fund at retirement age. Pension funds can be used to purchase an annuity which is a guaranteed payment (pension) for life. The amount of the payment is determined by the insurer. Annuities are discussed in more detail later.

Contributions are typically a percentage of pensionable salary paid by the employee and a percentage paid by the employer, which are invested in a managed fund i.e. pension contributions may be invested in any combination of cash funds, share funds, property funds, etc. This type of scheme has an advantage for employers in that the cost to the employer is certain (i.e. the level of his contributions to the pension scheme). However, the disadvantage for employees is that the benefits at retirement are uncertain as they depend on the performance of the fund (i.e. the value of the fund could increase or decrease) and will not be known until the retirement date.

Example 2

Tina earns €35,000 per year. Both Tina and her employer contribute 3% of her salary (€1,050) to the Defined Contribution company pension scheme. The pension available to Tina on retirement will depend on how the fund performs over the years i.e. the amount which Tina can use to purchase an annuity when she reaches retirement age. The only certainty in this situation is the amount that will be contributed to the fund each year.

3.3 Hybrid Pension Schemes

Hybrid pension schemes can take various forms. One of the more common formats is a combination hybrid, which is a combination of a Defined Benefit scheme and Defined Contribution scheme. This scheme is typically in the form of defined benefit up to a fixed salary level and defined contribution on any earnings over the fixed level. Members on low incomes will generally fall under the defined benefit aspect of the scheme and hence be subject to less risk. Those on higher earnings will have more risk, as they contribute to both aspects of the scheme. The level of contribution and risk for the employer falls somewhere between Defined Benefit schemes (high risk) and Defined Contribution schemes (low risk) schemes.

3.4 Additional Voluntary Contributions

Employees may wish to make additional contributions to the pension scheme over and above the normal regular amount required by the rules of the pension scheme, and which are outlined in the employee's terms of employment. The mechanism for making such contributions is by way of Additional Voluntary Contributions (AVCs).

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An employee may wish to make an AVC in order to improve his pension entitlements at retirement, for example, where the employee does not have sufficient service to qualify for a full pension. In a Defined Benefit scheme, an individual may use AVCs to purchase additional or ‘notional’ years of service. For example, if an individual expects to have 30 years’ service at retirement it may be possible to ‘buy’ 10 years notional service using AVCs and thus receive a pension based on 40 years’ service on retirement.

4. Personal Retirement Savings Account

A Personal Retirement Savings Account (PRSA)² is a savings contract between an individual and an authorised PRSA provider and operates in a similar manner to a Defined Contribution pension scheme. This means that the benefits are determined by the value of the account at retirement. PRSAs are designed to enable people, especially employees who are not members of an occupational pension scheme, to save for retirement.

The person who effects the PRSA is the beneficial owner of the PRSA assets and a PRSA can be taken from job to job by an employee. PRSAs are available to those who are employed, self-employed, unemployed and homemakers/carers.

PRSA providers cannot impose a minimum contribution greater than €300 per year.

Example 3

Sophie is currently unemployed but would like to make provision for her retirement. Even though Sophie is not in employment, she can take out a PRSA.

There are two types of PRSAs:

- Standard PRSAs, and
- Non-standard PRSAs.

4.1 Standard PRSAs

The maximum charge on a Standard PRSA is capped at 5% of the contributions paid and 1% per year of the PRSA assets and the range of investments allowed is restricted. A standard PRSA cannot be sold if there is a condition attached to it that another product must also be purchased (e.g. life assurance).

4.2 Non-Standard PRSAs

A Non-Standard PRSA is a contract, which is not a Standard PRSA. Typically these types of PRSAs would have a higher charging structure than Standard PRSAs, offer a greater range of investment options, and may have other conditions attached, such as the need to take out a life assurance policy.

4.3 Employers’ Obligation to provide a PRSA

Employers, regardless of the size of the workforce, who do not provide a company pension scheme for their employees, or where some employees are excluded from the company scheme, are obliged to enter into a contract with a PRSA provider to provide access for such excluded employees to at least one Standard PRSA.

² Pensions (Amendment) Act 2002

An excluded employee is one who:

- Does not have access to a company pension scheme, or
- Has to suffer a waiting period of more than 6 months before he can become a member of the company pension scheme, or
- Cannot make AVCs to the existing company pension scheme, or
- Is included in the company pension scheme for death-in-service benefits only.

Having entered into a contract with a PRSA provider, the employer is then obliged to:

- Notify excluded employees (i.e. full-time, part-time, seasonal, fixed-term, casual, etc.) that they can contribute to a Standard PRSA, and
- Facilitate the PRSA provider with access to employees during paid working time at the workplace to set up the PRSA or allow reasonable paid time off to the employees to allow them to set up a PRSA, and
- Deduct contributions from an employee's wages at the request of the employee and remit them to the PRSA provider by the 21st of the month, after the month in which they were deducted.

If an employer makes a Standard PRSA available to his employees and an employee chooses to enter into a PRSA contract with another provider, the employer is not obliged to deduct PRSA contributions from the employee's salary and pay them over to the employee's chosen PRSA provider.

5. Pan-European Personal Pension Product

A Pan-European Personal Pension Product (PEPP)³, which was introduced in March 2022, is an EU wide voluntary personal pension scheme that offers EU citizens a new option to save for retirement. It complements existing pension schemes in each EU State. PEPPs operate in a similar manner to a PRSA, with the exception that there is no onus on an employer to make a PEPP available to an employee in the absence of an occupational pension scheme.

A PEPP is a contract between the individual and the PEPP provider and will allow savers to continue saving in the same product where they change residence within the EU. A PEPP operates in the same manner as a defined contribution pension scheme. Any return on investments will be used to provide an income based on retirement.

The tax treatment which applies to PRSAs (as outlined below) also applies to PEPPs.

Charges for a basic PEPP will be capped at 1% of the accumulated capital per year. As PEPPs are still not generally available in Ireland, it is not proposed to go into them in any further detail.

6. Retirement Annuity Contract⁴

Self-employed people or employees who do not have access to an occupational pension scheme may opt to take out a Retirement Annuity Contract (RAC) with a pension provider. RACs are more commonly known as a private pension or a personal pension. An individual must have a source of relevant earnings to take out an RAC. Relevant earnings include earnings from a non-pensionable employment or income from a trade or profession.

³ European Union (Pan-European Personal Pension Product) Regulations 2022 – S.I. 435/2022

⁴ Taxes Consolidation Act 1997, Sections 783 to 787

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Example 4

Paula recently became self-employed. She had previously been employed and had been a member of an occupational pension scheme. If Paula wishes to continue making pension contributions, she can take out either an RAC or a PRSA.

7. Tax Deductible Pension Contributions

Relief from income tax is available in respect of contributions⁵ (inclusive of AVCs) paid by an employee into any type of pension scheme (occupational pension, RAC or PRSA), provided the scheme is Revenue approved.

Tax relief for employees is generally granted by deducting the amount of the contribution from the employee's gross pay, before deducting Income tax. This is known as the "net pay arrangement". This results in an employee obtaining tax relief at his marginal rate on the pension contributions. There is no relief from PRSI or USC.

Note: With regard to employee contributions to an RAC, the net pay arrangement can only be operated where there is no occupational pension scheme in place.

The limits for which tax relief is available are as follows:

Employee's age at any time during the tax year	Limits
Under 30 years	15% of relevant earnings
30 to 39	20% of relevant earnings
40 to 49	25% of relevant earnings
50 to 54	30% of relevant earnings
55 to 59	35% of relevant earnings
60 years and over	40% of relevant earnings

The 30% limit also applies to individuals engaged in specified sports professions, namely: athletes, badminton players, boxers, cricketers, cyclists, footballers, golfers, jockeys, motor racing drivers, rugby players, squash players, swimmers and tennis players, regardless of age.

An individual's relevant earnings are his gross earnings from his employment, including salaries, bonuses, commissions, overtime, premiums, holiday pay, sick pay, maternity pay, etc. It also includes the notional value of any taxable benefit-in-kind (BIK), including the taxable value of a share award and the taxable gain arising on the exercise of a share option. Relevant earnings refer to an employee's gross earnings before any deductions are made under a Revenue approved salary sacrifice scheme (i.e. travel pass, bicycle or APSS).

Revenue does not consider the following to be relevant earnings:

- The taxable element of a termination payment,
- Department of Social Protection (DSP) benefits such as Illness Benefit,
- Taxable payments received from a Permanent Health Insurance scheme,
- The tax exempt gain arising from the exercise of an option under a SAYE scheme.

⁵ Taxes Consolidation Act 1997, Sections 774, 776, 784 and 787E

Example 5

Pat Murphy earns €2,500 per month and he contributes €150 per month into a Revenue approved company pension scheme by deduction from salary. Calculate his Income Tax, PRSI, USC, net pay and employer PRSI for the month of January, assuming he is a single person and is entitled to the standard USC thresholds.

Solution 5

Gross pay		€2,500.00
Less: Pension contribution		<u>€150.00</u>
Taxable Pay		€2,350.00
SRCOP	€40,000 / 12 months =	€3,333.34
 Gross tax	€2,350 @ 20% =	€470.00
Less: Tax credits	€3,550 / 12 months =	<u>€295.84</u>
Income tax liability		€174.16
 Employee PRSI	€2,500 @ 4% =	€100.00
 USC		
Income up to Rate 1 COP	€1,001.00 @ 0.5% =	€5.00
Excess up to USC Rate 2 COP	€909.00 @ 2% =	€18.18
Balance of pay at Rate 3	€590.00 @ 4.5% =	<u>€26.55</u>
Net Pay		€49.73
		€2,026.11
 Employer PRSI	€2,500 @ 11.05% =	€276.25

Tax relief may be claimed in respect of pension contributions up to an annual earnings ceiling of €115,000. Therefore, if an individual earns more than €115,000 in the current tax year, his maximum tax deductible pension contribution is limited to a % of €115,000 depending on his age. This limit applies whether an individual contributes to a single pension or to several different pensions.

Example 6

Simon is aged 61. Calculate his maximum tax deductible pension contribution assuming he earns (a) €85,000 per year, and (b) €150,000 per year.

Solution 6

$$(a) \quad €85,000 \times 40\% = \quad €34,000$$

$$(b) \quad €115,000 \times 40\% = \quad €46,000$$

Where an individual contributes more than he is able to obtain tax relief on, the excess may be carried forward and claimed in future tax years, subject to the % limits in those years not being exceeded. This is discussed in more detail later.

7.1 Tax Deductible PRSA Contributions

Before an employer can deduct an employee's PRSA contribution from his gross pay, he must receive a PRSA (Net Pay) Certificate from the PRSA provider and retain it as part of his tax records for 6 years. The certificate will contain the employee's date of birth and PPSN.

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Employers should only use certificates with the term “Net Pay” in the title as a basis for operating the “net pay arrangement” i.e. contributions are deducted from the employee’s gross pay before the calculation of Income Tax. If the employer does not receive such a certificate then the pension contributions must be deducted from the employee’s net take home pay (after deduction of Income Tax, PRSI and USC). Any tax relief due in this instance is a personal matter for the employee.

Where an employee pays a PRSA contribution directly to the PRSA provider, any tax relief due can be claimed either at year end or during the tax year. Tax relief is given at year end by reducing the individual’s taxable income by the amount of the allowable pension contributions. Relief is given to an employee mid-year by increasing his SRCOP by the amount of the pension contribution and increasing his tax credits by 20% of the pension contribution.

“Net Pay” certificates are issued where the employee is either not a member of a company pension scheme or is not permitted to make AVCs to the scheme and therefore the PRSA contribution is in respect of an AVC only.

Example 7

Liam is single and earns €2,000 per month. He pays €100 per month into a PRSA. He is entitled to the standard USC thresholds. Calculate his Income Tax, PRSI, USC, net pay and employer PRSI for the month of January assuming:

- The PRSA contributions are made by deduction from salary, and
- The PRSA contributions are paid by monthly direct debit from Liam’s bank account and tax relief is granted by Revenue by increasing his SCROP and tax credits.

Solution 7(a)

Gross Pay		€2,000.00
Less: PRSA contribution		<u>€100.00</u>
Taxable Pay		€1,900.00
SRCP	€40,000 / 12 months =	€3,333.34
Gross tax	€1,900 @ 20% =	€380.00
Less tax credits	€3,550 / 12 months =	<u>€295.84</u>
Income tax liability		€84.16
PRSI	€2,000 @ 4% =	€80.00
USC		
Income up to Rate 1 COP	€1,001.00 @ 0.5% =	€5.00
Excess up to USC Rate 2 COP	€909.00 @ 2% =	€18.18
Balance of pay at Rate 3	€90.00 @ 4.5% =	<u>€4.05</u>
Net Pay		<u>€27.23</u>
		<u>€1,708.61</u>
Employer PRSI	€2,000 @ 11.05% =	€221.00

Solution 7(b)

Tax Credits	€	SRCP	€
Single Person	1,775.00	Single Person	40,000
Income Tax	1,775.00		
PRSA Contribution ($\text{€}100 \times 12$) @ 20%	<u>240.00</u>	Contributions to PRSA	<u>1,200</u>
Adjusted Tax Credits	3,790.00	Adjusted SRCP	41,200
Monthly Tax Credit	<u>315.84</u>	Monthly SRCP	<u>3,433.34</u>
 Gross Pay			€2,000.00
 SRCP			€3,433.34
Gross tax	€2,000 @ 20% =	€400.00	
Less tax credits		<u>€315.84</u>	
Income tax liability			€84.16
 PRSI	€2,000 @ 4% =		€80.00
 USC			
Income up to Rate 1 COP	€1,001.00 @ 0.5% =	€5.00	
Excess up to USC Rate 2 COP	€909.00 @ 2% =	€18.18	
Balance of pay at Rate 3	€90.00 @ 4.5% =	<u>€4.05</u>	<u>€27.23</u>
Net Pay			<u>€1,808.61</u>
 Employer PRSI	€2,000 @ 11.05% =		€221.00

If an employee pays contributions directly to the PRSA provider and does not claim tax relief during the tax year, he should apply for it following the end of the year. In this instance Revenue would reduce his taxable income in his annual tax return by the amount of the tax allowable PRSA contribution and pay the appropriate tax refund to the employee.

Example 8

Liam is single and earns €24,000 per year. His employer deducted a total of €1,250 in tax from his wages during the year. Liam contributed €1,200 to a PRSA during the year however he waited until the end of the year to claim tax relief on this contribution. Illustrate how Revenue would grant tax relief in respect of this contribution in Liam's annual tax return.

Solution 8

Gross Pay		€24,000.00
Less: PRSA contribution		<u>€1,200.00</u>
Taxable Pay		€22,800.00
 SRCP		€40,000.00
Gross Tax	€22,800 @ 20% =	€4,560.00
Less tax credits	(Single Person & PAYE)	<u>€3,550.00</u>
Tax liability		€1,010.00
Amount of tax deducted by Employer		<u>€1,250.00</u>
Refund due		€240.00

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Assuming an individual makes a minimum contribution of €1,525 to a PRSA, he is entitled to tax relief on €1,525, even if this amount exceeds the amount upon which tax relief is available using the % limits previously outlined. This provision applies to PRSAs only.

Example 9

Laura is 25 years of age. She works part-time and earns €9,700 per year. Calculate the maximum tax relief she can obtain if she contributes €1,800 to a PRSA.

Solution 9

<i>Actual contributions to PRSA</i>	<i>€1,800</i>
<i>Normal relief available</i>	<i>€1,455</i>
<i>Actual relief available</i>	<i>€1,525</i>

Even though the normal tax relief available is €1,455, she will obtain tax relief on contributions of €1,525 because she has contributed more than €1,525. The balance of €275 (€1,800 - €1,525) may be relieved in a future year, subject to the appropriate age limits in that year. This is discussed in more detail below.

7.2 Contributions to multiple pension schemes

Where an individual wishes to make contributions to multiple pension schemes or PRSAs, tax relief is calculated on the combined contributions.

Example 10

James is 51, single and earns €77,000 per year. He contributes 25% of his earnings to an RAC. Calculate the maximum amount he could contribute to a PRSA so that he obtains maximum tax relief.

Solution 10

<i>Maximum upon which tax relief may be claimed</i>	<i>€77,000 @ 30% = €23,100</i>
<i>Contribution to a RAC</i>	<i>€77,000 @ 25% = €19,250</i>
<i>Maximum tax allowable PRSA contribution</i>	<i>€77,000 @ 5% = €3,850</i>

7.3 Backdated Pension Contributions

Where an individual contributes to an occupational pension scheme, PRSA or RAC, **outside of payroll** after the end of an income tax year but before the self-assessment tax return date for that year (i.e. the following 31st October or the extended self-assessment filing date where the income tax return is paid and filed online, tax relief may be claimed on such contributions made in respect of the previous tax year by completing an Income tax return. For example, if an individual made a contribution to a PRSA in September 2023, he could elect to claim tax relief in respect of 2022 tax year, even though the contribution was made after the end of that tax year.

7.4 Breaches of the limit

Where an employee makes contributions to an occupational pension scheme (including AVCs) or a PRSA, the employer is only permitted to allow tax relief up to the maximum age related limits. Any contributions in excess of the age related limit should be deducted from the employee's net take home pay as it does not qualify for tax relief. This generally only happens where an employee makes AVC contributions to the pension scheme. However, tax relief for any excess contributions, while not allowable in the year in which they are paid, are not lost. It is open to the employee to approach Revenue after the year end to claim relief for any excess contributions to be carried forward to a future year.

Some payroll software programmes do not monitor the level of contributions as a percentage of relevant earnings, even if the employee's date of birth is recorded on the payroll software and it is therefore possible for excess tax relief to be granted to an employee. Should this be discovered in a Revenue compliance intervention, Revenue will hold the employer liable for any underpayment of Income Tax.

Example 11

Mary is single, aged 28, and is employed by ABC Ltd. She earns €48,000 per year. Her tax credits and SRCOP are €3,550 and €40,000 respectively. During the current year she contributed €7,500 to her employer's Revenue approved occupational pension scheme. This comprised of a regular contribution of €500 per month plus a once off AVC of €1,500. Calculate her tax liability for the current year and state what figures are used to calculate her PRSI, USC and her employer's PRSI liability.

Solution 11

Gross Pay	€48,000.00
Less tax allowable pension contributions	<u>€7,200.00*</u>
Taxable Pay	€40,800.00
SRCP	€40,000.00
 Gross Tax	 €40,000 @ 20% =
	<u>€8,000.00</u>
	€800 @ 40% =
	<u>€320.00</u>
	€8,320.00
 Less tax credits	 <u>€3,550.00</u>
Income tax liability	€4,770.00

PRSI (employee and employer) and USC are calculated on the gross pay of €48,000.

* Note that only the maximum relief of 15% of earnings has been allowed i.e. €48,000 @ 15% = €7,200. The excess figure of €300 should be recorded as an after tax deduction from Mary's net pay. Mary can apply to Revenue to obtain tax relief for the balance of €300 in a subsequent tax year subject to the appropriate limits for that year not being breached.

8. Employer Contributions

8.1 Employer Contribution to Occupational Pension Scheme

Employer contributions to an occupational pension scheme on behalf of an employee are not taken into account when calculating an employee's Income Tax, USC or PRSI. In addition, the employer's contribution is ignored for the purposes of calculating the maximum tax relief available to the employee for pension contributions.

Example 12

Zoe is 28 years of age, single and earns €35,000 per year.

- (a) Calculate her maximum tax deductible pension contribution.
- (b) Calculate her taxable pay for the year assuming that she contributes €3,500 to the pension scheme and her employer contributes a further €3,500.

Solution 12 (a)

Maximum tax deductible pension contribution: €35,000 x 15% = €5,250

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Solution 12 (b)

Gross pay	€35,000
Less: Allowable employee pension contribution	€3,500
Taxable pay	€31,500

The employer contribution to the occupational pension scheme is ignored.

8.2 Employer Contribution to a PRSA

Since the enactment of Finance Act 2022 on 15th December 2022, employer contributions to an employee's PRSA are treated in the same manner as an employer contribution to an occupational pension scheme as outlined above. Employer contributions to a PRSA on behalf of an employee are not taken into account when calculating an employee's Income Tax, USC or PRSI liabilities.

Prior to 15th December 2022, an employer contribution to a PRSA on behalf of an employee was a BIK. It was aggregated with the employee's pay for determining his total relevant earnings. However, regardless of the level of an employer PRSA contribution, Income tax, USC, or PRSI was not applied to the employer's contribution through payroll as an employer contribution to a PRSA was outside the scope of the PAYE system. A tax liability only arose in a small number of cases where the total contribution (aggregate of employee and employer contributions) exceeded the amount which was eligible for tax relief, with the onus on the employee to pay any liability directly to Revenue in an annual Income tax return.

8.3 Employer Contribution to an RAC

An employer contribution to an RAC is a taxable BIK and is liable to Income Tax, USC and PRSI through payroll. However, the employee can avail of tax relief on these contributions subject to the age limits mentioned above. Therefore, whilst Income tax is applied to the employer's contributions at source through payroll, the employee can in turn apply to Revenue for tax relief on such pension contributions subject to the age limits mentioned above.

8.4 Employer Administration of Pension Contributions

Regardless of the type of pension scheme (company pension, PRSA or RAC), employers must pay over the contributions to the administrator of the scheme by the 21st of the month after the month in which they were deducted (e.g. pension contributions deducted during the month of February must be paid by 21st March).

Employers must notify employees in writing, at least once per month, of the total amount deducted from the employee's salary and the amount of the employer contribution, if any, paid to the pension trustees in the preceding month. The easiest method of achieving this requirement is to show the contributions, and a statement to indicate that the contributions have been remitted to the trustees, on the employee's payslip.

A Form P11D is a form which Revenue may issue to an employer requiring them to provide details of benefits received by all employees during a tax year. An employer is only required to complete a P11D if requested to do so by Revenue. For tax year 2022, an employer is required to include the amount contributed to an employee's PRSA, if applicable. This is because the employer's PRSA contribution is a benefit which although taxable, was not taxable via payroll.

For 2023 and subsequent years, there will be no requirement to record an employer PRSA contribution on a P11D.

8.5 Unapproved Salary Sacrifice

Where an employee forgoes the right to receive part of his contractual remuneration in return for a corresponding payment by the employer into the company pension scheme, this is considered to be an unapproved salary sacrifice. Hence the amount sacrificed by the employee is fully liable to income tax, USC and PRSI in the normal manner.

9. Options on Leaving Employment before Retirement

On leaving or changing employment, an employee may be entitled to one or more of the following options:

- Receive a refund of the employee contributions, or
- Transfer the pension fund to another pension scheme, or
- Preservation of benefits.

9.1 Refund of Employee Contributions

If, on leaving employment, an employee has been a member of the company pension scheme for less than 2 years, he is entitled to receive a refund of his own pension contributions. He is not entitled to a refund of any employer contributions. The administrator of the pension scheme is required to deduct withholding tax on the refund at the standard rate of 20%. The withholding tax deducted is paid over to Revenue by the pension administrator.

It is important to note that a refund of pension contributions and the tax deducted of 20% should not be reported on a Payroll Submission as a refund of pension contributions and is not regarded as pay for PAYE purposes, and the tax deducted is a withholding tax which cannot be recovered by the employee even if he has no other income. The refund of pension contributions is not liable to PRSI or USC.

An individual cannot generally seek a refund of his own contributions to a PRSA or an RAC. A refund of a PRSA or RAC contribution can only be made during the 30 day cooling off period after such a pension is entered into.

Example 13

Having been a member of the company pension scheme for 1 year, Patrick leaves his employment and obtains a refund of his employee contributions of €3,000 gross. The refund is treated as follows:

<i>Refund of superannuation contributions</i>	<i>€3,000</i>
<i>Less 20% withholding tax</i>	<i>€600</i>
<i>Net refund</i>	<i>€2,400</i>

9.2 Transfer of Pension Fund

Another option for the employee is to transfer the pension fund (generally referred to as a transfer value) to another occupational pension scheme, however restrictions can apply. Transfer values generally comprise both the employee and employer contributions where applicable.

For example, on leaving employment, an employee could take a transfer value from his previous employer's occupational pension scheme and transfer it to his new employer's occupational pension scheme, subject to the agreement of the new employer. Likewise, funds in a PRSA can be transferred to another PRSA or to an occupational pension and from an RAC to a PRSA.

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However, it is not possible to transfer funds from a PRSA to an RAC or from an RAC to an occupational pension scheme.

Since 1st January 2022 funds in an occupational pension scheme may be transferred to a PRSA owned by the individual where the individual is changing employment, or the scheme is being wound up. Prior to 1st January 2022 funds in an occupational pension scheme could only be transferred to a PRSA if the contributor had been in the scheme for 15 years or less and the employee was changing employment, or the scheme was being wound up.

Where an employee leaves employment with less than 2 years membership of the scheme, many pension schemes will allow the employee to take a transfer value (which is not subject to 20% withholding tax) as opposed to a refund of the employee's contributions. However, some schemes restrict the options if leaving employment with less than 2 years membership of the pension scheme to receiving a refund only.

9.3 Preservation of Benefits

The final option available to an employee on leaving employment is to leave the funds (both employee and employer contributions) in the pension scheme until he reaches retirement age. This is known as a preserved or deferred benefit. This option is an automatic entitlement for those employees who have at least 2 years membership of the company pension scheme. Depending on the rules of the pension scheme, this option may not be available to an employee who has been a member of the scheme for less than 2 years.

10. Payment of a Pension

When an employee receives his pension directly from his employer, the employer must continue to deduct Income Tax and USC on the pension payment under the PAYE system. There is no requirement to cease the employment on retirement if the pension is payable from the same employer registration number. However, if the pension is payable under a separate employer registration number or if it is paid by a separate pension company, or by a separate trust fund, the employer must cease the employment by entering a leave date on the Payroll Submission to Revenue when employee retires.

The company or trust paying the pension should request a Revenue Payroll Notification (RPN) on commencement of the pension payment to register the pensioner with Revenue. The retired employee can also cease the employment and register the pension using myAccount. Pension payments are not subject to PRSI and should be recorded under PRSI Class M regardless of the age of the individual.

Individuals in receipt of an occupational pension are liable to USC at the appropriate rates depending on their age, income and medical card status. However, State pensions payable by the DSP, such as the State Pension (Contributory), while taxable, are not liable to either PRSI or USC. Revenue tax DSP pensions by reducing the individual's SRCOP and tax credits by the appropriate amounts.

Example 14

Jim is 72 years old and single. He is in receipt of an occupational pension of €29,000 per year together with the State Pension (Contributory) of €13,795.60. This is his only income. Calculate his monthly SRCOP and tax credits and his monthly tax, USC and PRSI liabilities.

Solution 14	SRCP	Tax Credits
Single Person	€40,000.00	€1,775.00
PAYE		€1,775.00
Age		€245.00
Less DSP State Pension	(€13,795.60) @ 20% =	(€2,759.12)
Annual	€26,204.40	€1,035.88
Monthly	<u>€2,183.70</u>	<u>€86.33</u>
 Monthly Pension	 €29,000.00 / 12 months =	 €2,416.67
 SRCP		 €2,183.70
Gross tax	€2,183.70 @ 20% =	€436.74
	€232.97 @ 40% =	<u>€93.18</u>
Less Tax credits		€529.92
Net monthly income tax liability		<u>€86.33</u>
		€443.59
 <i>Employee PRSI</i>	 <i>Class M</i>	 <i>Nil</i>
 Income up to USC Rate 1 COP	 €1,001 @ 0.5% =	 €5.00
Balance of pay at Rate 2	€1,415.67 @ 2% =	<u>€28.31</u>
Monthly USC liability		€33.31

As Jim is aged over 70 and has aggregate income for USC purposes which does not exceed €60,000, he is subject to the USC at a maximum rate of 2%.

11. Pension Adjustment Orders

In the event of a relationship breakdown, a pension provider may receive a pension adjustment order (PAO) from the Court. This entitles a spouse, civil partner and/or dependants to a portion of an individual's pension benefits as determined by the Courts and can be applied to any type of pension. The Court may order that the beneficiary of the PAO should receive a portion of the pension or may arrange a transfer payment out of the scheme to the beneficiary's own pension.

A PAO may be made in addition to or instead of a maintenance order and if a person has several different pensions a PAO may be issued for each one.

Pension payments received under a pension adjustment order are liable to Income tax and USC under the PAYE system in the same way as any other pension payment.

12. Benefits on Retirement

The benefits of a pension may generally be obtained by a contributor on retirement between the ages of 60 and 75 but may be taken earlier in some schemes (e.g. if the employee retires early or suffers ill health, etc.). Most, if not all, pension schemes provide for a lump sum on retirement. Lump sums from a pension are tax free up to a maximum lifetime limit of €200,000. This is discussed in more detail later.

12.1 Defined Benefit Scheme

Under a Defined Benefit scheme, a retired employee is generally entitled to a tax free lump sum based on his length of service up to a maximum of 1.5 times his final remuneration, subject to a maximum of €200,000. Any balance in excess of €200,000 is taxable. In addition, the individual

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will be entitled to an annual pension based on length of service up to a maximum of 2/3^{rds} of his final remuneration. The pension is liable to Income Tax and USC, but is not liable to PRSI.

12.2 Defined Contribution Scheme

There is no guarantee of a particular level of pension or lump sum from a Defined Contribution scheme. Instead, the employee's contributions accumulate in a fund which becomes available to the employee on retirement. An individual has the following options at normal retirement age (subject to the rules of each individual scheme):

- Option A** A tax free lump sum based on his length of service up to a maximum of 1.5 times his final remuneration, subject to a maximum of €200,000, and use the balance, if any, to buy an annuity (pension), or
- Option B** Take up to 25% of the fund as a tax free lump sum (subject to the lifetime limit of €200,000) and transfer the balance to an approved retirement fund (ARF), or
- Option C** Take up to 25% of the fund as a tax free lump sum (subject to the lifetime limit of €200,000) and take the balance of the fund as a taxable lump sum.

There are certain restrictions regarding Option B and Option C which are outlined below.

12.2.1 Option A - Annuity

An employee is generally entitled to take the traditional option of a tax free lump sum based on his length of service, up to a maximum of 1.5 times his final remuneration (subject to the lifetime limit of €200,000), and use the balance if any, to buy an annuity. The tax free lump sum is calculated as 3/80^{ths} of his final remuneration for each complete year of service subject to a maximum of 40 years.

An annuity is a guaranteed income for life purchased by the individual on retirement from a life assurance company. In return for a lump sum payment, the assurance company agrees to pay a specified amount of income (which is generally referred to as a pension) for the remainder of the individual's life. This annuity (pension) is paid to the individual in regular intervals, such as monthly payments. The amount the individual will receive depends on variables such as his age, state of health, amount invested, etc.

Annuity (pension) payments received are liable to Income tax and USC under the PAYE system, but they are not liable to PRSI.

Example 15

Rita has retired from her employment at age 65 after 32 complete years of service. She has been contributing to a Defined Contribution scheme and has accumulated a fund of €250,000. Her final remuneration was €58,000.

*Using this option, Rita could receive a tax free lump sum of €69,600 (€58,000 @ 96/80^{ths} *) from the pension fund. She could then purchase an annuity with the balance of €180,400, in return for which the life assurance company would agree to give Rita a guaranteed income for life (pension) of say, €8,025 per year. This annuity payment (pension) of €8,025 is liable to Income Tax and USC under the PAYE system but is not liable to PRSI.*

*3/80^{ths} x 32 years of service.

12.2.2 Option B - Approved Retirement Fund

After taking up to the initial 25% tax free lump sum (subject to the lifetime tax free limit of €200,000), an individual may invest the balance of the pension fund in an Approved Retirement Fund (ARF). An ARF invests money in funds and operates in a similar manner to a pension fund.

There is no charge to income tax when funds are transferred from a pension scheme to an ARF, however, as funds are subsequently withdrawn from the ARF they are treated as Schedule E income and are subject to Income tax and USC under the PAYE system. Withdrawals are also subject to PRSI if the recipient is under the State pension age (currently 66 years).

Revenue deem that a minimum % of the value of the ARF is withdrawn each year where the individual is aged 61 years or over. This is known as an imputed distribution.

Where the value of the assets in the ARF does not exceed €2 million, the imputed distribution is:

- 4% where the owner is not aged 70 years or over for the whole of the tax year, i.e. 4% will apply in the year the individual turns 70, **or**
- 5% if the individual is aged 70 or over for the whole of the tax year.

In all cases where the value of the assets in the ARF exceeds €2 million, the imputed distribution is 6%.

Income tax and USC (and PRSI if applicable) at the appropriate rates must be deducted on the actual withdrawals at the time they are made and returned by the administrator on the Payroll Submission for that month. If the actual withdrawals are less than the imputed distribution, the excess of the imputed distribution is deemed to have been paid in February of the following year. For example, the imputed distribution for 2022 arises in February 2023 and is subject to Income Tax and USC (and PRSI if applicable) which must be returned by the administrator in the February 2023 Payroll Submission.

Income tax is chargeable at the higher rate unless the administrator has received an RPN from Revenue.

Example 16

Following on from the previous example, Rita has a pension fund of €250,000. She opted to take 25% (€62,500) of the fund tax free, subject to the €200,000 lifetime limit. Rita could invest the balance (€187,500) of the fund in an ARF from which she could subsequently make withdrawals.

Example 17

Val, age 68, has an ARF valued at €300,000. She withdrew €11,000 in June. State if an imputed distribution arises, and calculate the Income Tax, USC and PRSI arising assuming the pension administrator does not hold an RPN and state when the liabilities are payable.

Solution 17

Imputed Distribution:	€300,000 @ 4% =	€12,000
Less actual withdrawals:		<u>€11,000</u>
Balance of Imputed Distribution		€1,000

Liabilities on actual withdrawal should be returned on the Payroll Submission for June:

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Income tax	€11,000 @ 40% =	€4,400
USC	€11,000 @ 8% =	€880
PRSI	Over 66 years	Nil

Liabilities on the imputed distribution should be returned on the Payroll Submission in the following February as follows (assume no change in the rates of tax or USC):

Income tax	€1,000 @ 40% =	€400
USC	€1,000 @ 8% =	€80
PRSI	Over 66 years	Nil

Individuals are encouraged to withdraw a minimum amount equal to the imputed distribution each year, as they will incur Income Tax, USC (and PRSI if applicable) on this amount regardless of whether it is withdrawn or not.

If the individual dies, any remaining funds in the ARF will form part of his estate.

12.2.3 Option C - Taxable Lump Sum

After taking up to the initial 25% tax free lump sum (subject to the lifetime tax free limit of €200,000), an individual may be allowed to take all or some of the balance of the fund as a taxable lump sum. The taxable lump sum is subject to Income Tax and USC under the PAYE system, but is not subject to PRSI.

Example 18

Following on from Example 17, Rita has a pension fund of €250,000 from which she received €62,500 (25%) as a tax free lump sum. Rita could take balance (€187,500) as a taxable lump sum, subject to Income Tax and USC, as opposed to investing it in an ARF.

An individual can avail of any of the 3 options outline above, assuming each option is permitted by the rules of their pension scheme.

12.3 RACs and PRSAs

There is no guarantee of a particular level of income or lump sum from an RAC or PRSA at retirement. The benefits from an RAC or PRSA are broadly similar to those which arise from a Defined Contribution pension scheme; however, the tax free lump sum is always calculated as 25% of the pension fund, subject to the maximum lifetime tax free limit of €200,000.

Hence, an individual can take up to 25% of the fund tax free subject to the maximum limit of €200,000, and use the balance to:

- (a) Buy an annuity,
- (b) Invest in an ARF,
- (c) Take it as a taxable lump sum, or
- (d) In the case of a PRSA, leave the balance in the PRSA and make ongoing withdrawals from it, which are liable to Income Tax and USC.

Once a withdrawal (i.e. this is generally the tax free lump sum) is made from a PRSA, it is regarded as a “vested PRSA”. Vested PRSAs are liable to the same imputed distribution rules which apply to ARFs. Where no assets of a PRSA have been paid to the owner, or any other

person, on or before his or her 75th birthday the PRSA will be treated as vesting on that date and liable to an imputed distribution.

The tax free lump sum from an RAC or PRSA cannot be calculated based on years of service and final remuneration.

13. Taxation of Pension Lump Sums⁶

Lump sum payments received from a pension scheme on retirement are taxable where the total amount received by an individual from all pension schemes exceeds €200,000. This lifetime limit of €200,000 includes any lump sum payment received from an Irish pension scheme received since 7th December 2005 and any lump sum payment from a foreign pension scheme since 1st January 2023, which must be taken into account when determining the remaining balance of the lifetime limit, or calculating any tax due where the lump sums exceed €200,000.

Amounts received in excess of this tax-free limit are subject to tax in two stages. The portion between €200,000 and €500,000 (i.e. up to the next €300,000) is taxed at the standard rate of Income Tax in force at the time of payment while any portion above that is taxed at the recipient's marginal rate of tax. The tax charged at the standard rate is "ring-fenced" so that no reliefs, allowances or deductions may be claimed against it. The 20% Income Tax due is deductible by the pension administrators and paid over to Revenue as a withholding tax and is returned to Revenue on a Form 790AA. It is outside the scope of the PAYE system and is not subject to PRSI⁷ or USC.⁸

Example 19

Lisa retired in February and received a lump sum from the pension scheme of €150,000. She received a tax free lump sum of €75,000 from a separate pension scheme 5 years ago. Calculate the tax due on the lump sum received by Lisa in February.

Solution 19

The first lump sum was not taxable as it did not exceed €200,000. However, it is included to determine if tax is payable on the second lump sum as follows:

<i>Lump sum received 5 years ago</i>	<i>€75,000</i>
<i>Lump sum received in February</i>	<i><u>€150,000</u></i>
<i>Total lump sums received</i>	<i>€225,000</i>
<i>Less lifetime limit</i>	<i><u>€200,000</u></i>
<i>Amount of lump sum taxable in February</i>	<i>€25,000</i>
 <i>Tax due:</i>	 <i>€25,000 @ 20% =</i>
	<i>€5,000</i>

The Standard Fund Threshold (SFT), which was capped at €2 million in 2014, is the total amount of tax relieved pension funds that an individual can take on retirement. Some individuals may have a higher Personal Fund Threshold (PFT) where they had previously accumulated a larger pension fund.

⁶ Taxes Consolidation Act 1997, Section 790AA

⁷ Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No. 2)(Excepted Emoluments and Income) Regulations 2014, S.I. No. 333/2014

⁸ Taxes Consolidation Act 1997, Section 790AA

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Any lump sum amount in excess of €500,000 (25% of the SFT) up to the SFT, (or up to a PFT where the individual holds a PFT Certificate from Revenue) is taxable at the higher rate of income tax applicable for the tax year through the PAYE system, unless the administrator has received an RPN for the individual from Revenue, in which case the details of the RPN should be applied. It is also liable to USC, but is not liable to PRSI.⁹

These payments and liabilities are recorded on the pension administrator's Payroll Submissions.

Example 20

Fred retired in January and received a lump sum from the pension scheme of €200,000. He previously received a retirement lump sum of €450,000 six years ago from another pension scheme. Calculate the tax payable on the lump sum received in January.

Solution 20

Lump sum received 6 years ago	€450,000
Less lifetime limit	€200,000
Amount taxed at standard rate 6 years ago	€250,000

Lump sum received in January	€200,000
Less: Balance of lifetime limit	Nil
Balance of amount taxable at standard rate	€300,000 - €250,000
Amount taxable at the higher rate	€50,000
	€150,000

January:

Taxable lump sum	€200,000
Tax due on Form 790AA*	€50,000 x 20% =
Tax collected through PAYE system	€150,000 x 40% =
USC collected through PAYE system	€150,000 x 8% =
Total liabilities (assuming no RPN received)	€12,000
	€82,000

*The amount taxable at 20% is returned to Revenue by the pension administrators on a Form 790AA and is not subject to PRSI or USC.

The amount taxable at the higher rate of income tax is also subject to USC (but not PRSI) and is returned to Revenue by the pension administrators on a Payroll Submission. The operation of an RPN is permitted if one is received by the pension administrators.

Summary of Limits for Pension lump sums

Limits	Tax Rate	Form to be Completed
Up to €200,000	Exempt	None
€200,000.01 to €500,000	Standard Rate	Form 790AA
€500,000.01 to SFT or PFT	Marginal Rate	Payroll Submission

Where the capital value of pension benefits drawn down by an individual exceed the SFT or PFT, the excess is liable to income tax at 40%. The pension administrator will deduct this as a withholding tax and pay it to Revenue using a Form 787S.

⁹ Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No. 2)(Excepted Emoluments and Income) Regulations 2014, S.I. No. 333/2014

It is also important to note that the €200,000 tax free amount is a lifetime limit and so it will apply to a single lump sum or where an individual is in receipt of lump sums from more than one pension, to the aggregate of those lump sums. The restriction also applies to all pension arrangements, including occupational pension schemes, RACs, PRSAs, public sector and statutory schemes.

There are certain exclusions from the pension lump sum tax charge. It will not apply, for example, to lump sum death-in-service benefits paid to a widow or widower, surviving civil partner, children, dependants, or personal representatives of a deceased person.

14. Permanent Health Insurance Schemes

Permanent Health Insurance (PHI) schemes, also known as Income Continuance Plans (ICPs), provide for periodic payments to an individual in the event of loss, or reduction, of income, if he is unable to work for an extended period of time due to ill health. Premiums payable into a Revenue approved PHI scheme qualify for tax relief at the individual's marginal rate of tax. Revenue approved schemes can either be group schemes or individual policies. In either case, a Revenue registered number should be assigned to the scheme or policy.

Where contributions are deducted from salary, tax relief on such contributions is given on a "net pay arrangement" basis i.e. the premiums are deducted from the employee's gross pay before calculating Income Tax. The tax relief granted on PHI contributions is subject to a maximum of 10% of the individual's income for the tax year. Employee contributions to PHI schemes do not qualify for PRSI (employee or employer) or USC relief. Where tax relief is not granted through payroll, it can be claimed directly from Revenue who will increase an employee's SRCOP and tax credits, or by way of a refund following the year end.

This relief should not be confused with tax relief due for medical insurance premiums payable to an authorised insurer such as those paid to VHI, LAYA Healthcare or Irish Life.

Example 21

Jean O'Hara earns €450 per week and her tax credits and SRCOP are €68.27 and €769.24 per week respectively. She is entitled to the standard USC COPs. The following deductions are made from her weekly pay: medical insurance €15, company pension scheme €20, PHI €10 and Christmas club €10. Calculate her Income Tax, PRSI, USC and net take home pay per week.

Solution 21

Gross pay		€450.00
Less: Pension contribution	€20.00	
PHI premium	€10.00	€30.00
Taxable pay		€420.00
 SRCOP		
		€769.24
 Gross tax	€420 @ 20% =	€84.00
Less: tax credits		€68.27
Net tax liability		€15.73
 EE PRSI liability	€450 @ 4% =	€18.00

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USC liability

<i>Income up to Rate 1 COP</i>	$\text{€}231.00 @ 0.5\% =$	$\text{€}1.15$
<i>Excess up to Rate 2 COP</i>	$\text{€}209.77 @ 2\% =$	$\text{€}4.19$
<i>Balance of pay at Rate 3</i>	$\text{€}9.23 @ 4.5\% =$	$\underline{\text{€}0.41}$

Calculation of net take home pay:

<i>Gross pay</i>		$\text{€}450.00$
<i>Less:</i>		
<i>Pension contribution</i>		$\text{€}20.00$
<i>PHI premium</i>		$\text{€}10.00$
<i>Tax liability</i>		$\text{€}15.73$
<i>PRSI liability</i>		$\text{€}18.00$
<i>USC</i>		$\text{€}5.75$
<i>Medical insurance</i>		$\text{€}15.00$
<i>Christmas club</i>		$\underline{\text{€}10.00}$
<i>Net take home pay</i>		$\text{€}355.52$
		$(\text{€}94.48)$

Where a group scheme or policy is not approved by Revenue, no tax relief is due in respect of the premiums paid into that scheme or policy.

14.1 Payments received from a Permanent Health Insurance Scheme

Where an employee is absent from work due to health reasons, and the Revenue approved PHI scheme makes a payment to him, the payment is liable to Income Tax and USC under the PAYE system which should be deducted by the administrator of the PHI scheme.

Payments received from a Revenue approved PHI scheme are not liable to PRSI. PRSI Class M should be applied when they are being taxed through payroll.

Payments received from an unapproved scheme or policy will not be taxable unless the benefit has continued for at least 12 months prior to the year of assessment. Where the benefit exceeds 12 months, the entire amount is taxable, including the first 12 months.

Where an employer operates a general policy to cover the costs of sick pay for employees, and the employer is the beneficiary of the policy, Income Tax, USC and PRSI continue to apply as normal to any payment made by the employer to the employee.

This is an area of considerable confusion (e.g. is it a Revenue approved PHI scheme or not, are benefits taxable or not, etc.) and employers are advised to consult with Revenue as appropriate.

15. Auto-Enrolment

A new Auto-Enrolment pension system is due to be introduced in 2024. The scheme will operate on a defined contribution basis where the level of contributions will be defined, but the value of the employee's pension entitlement will not be known until retirement.

Employees aged between 23 and 60 years, who earn more than €20,000 per year across all employments and who are not a member of a workplace pension scheme will be automatically enrolled in the auto-enrolment scheme. Those earning below the income threshold or aged outside of the parameters will be able to opt-in to the scheme. Employees who are existing members of an occupational pension scheme will not be automatically enrolled for the employment to which that pension relates.

Eligible employees will automatically be enrolled for a period of 6 months, at which point employees will have a 2 month window to opt out of the scheme. Where an employee opts out, they will receive a refund of their own contributions since enrolment, but all employer and State contributions will be retained in the employee's pension pot.

The employee contribution rate will initially be set at 1.5% of the employee's gross pensionable pay. This will be matched by an employer contribution and the State will top this up by an additional 33% of the employer contribution. The employer and State contributions will be capped on an upper earnings limit of €80,000. The State pension age will remain at 66 years. People will have the option to continue working up until the age of 70 years in return for a higher State Pension.

CHAPTER 10

Pay Related Social Insurance

- 1. Introduction**
 - 2. PRSI Contribution Week**
 - 3. Employed Contributor**
 - 4. Reckonable Earnings**
 - 5. PRSI Classes and Subclasses**
 - 6. Job-Sharers**
 - 7. JobsPlus**
 - 8. PRSI Overpayments**
 - 9. PRSI Refunds**
 - 10. PRSI Records**
 - 11. Summary of PRSI Classes**
-

1. Introduction

The Social Insurance system was first introduced in Ireland in 1911 and the Social Welfare Act, which launched the current system, was enacted in 1953. The most recent consolidation of the legislation took place in 2005 with the **Social Welfare (Consolidation) Act 2005**.

Pay Related Social Insurance (PRSI), which is administered by the Department of Social Protection (DSP), is regarded by many as quite simply another form of taxation. Individuals are required to pay PRSI based on the source and amount of their income, however, unlike Income Tax and USC, the payment of PRSI contributions may entitle the individual to various social insurance benefits, for example Illness Benefit, Maternity Benefit, State Pension (Contributory), etc. Such payments made by the DSP are funded by PRSI contributions made by employees, employers, the self-employed and by the Exchequer.

The rate and amount of PRSI payable depends on the PRSI classification of an individual's income. It is the income of an individual which is classified for PRSI purposes and not, as is commonly believed, the individual himself. It is therefore possible for an individual who has 2 different sources of income to have 2 different PRSI classes, one applied to each source of income.

For example, an employee who retires and receives a retirement pension from his employer and then returns to work on a part-time basis will have a different PRSI class applied to his retirement pension and to his part-time earnings from his employment. The classification of income for PRSI purposes is dealt with in more detail later.

PRSI contributions are payable by both employers and employees. It is important to realise that different rules, rates and exemption thresholds apply to employee and employer contributions.

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PRSI is calculated on the amount of an employee's reckonable earnings in any contribution week (i.e. it is calculated on a week 1 basis in any given pay period with no reference to cumulative earnings). 'Reckonable earnings' is the term used to describe the amount of an employee's earnings which is liable to PRSI. Therefore, an employee's PRSI class or subclass can vary from one pay period to another depending on the amount of the employee's reckonable earnings in each contribution week.

2. PRSI Contribution Week

A contribution week¹ is a successive period of 7 days commencing on 1st January each year. A contribution week is therefore the same as a week in the income tax calendar. If an employee receives a payment for any part of a week which is subject to PRSI, even where only an employer contribution is payable, he is deemed to have made a contribution for that contribution week. In this way, an individual who earns €150 for 2 days' work on 7th and 8th January, is regarded as having made PRSI contributions for two separate contribution weeks, weeks 1 and 2 of the income tax year (7th January is in week 1 and 8th January is in week 2).

The current contribution year started on 1st January last and will end on 31st December. The last day of the year (or the last 2 days of a leap year) are deemed to be included in week 52. Therefore, 52 weeks contributions should be recorded for employees employed and paid for the entire year.

3. Employed Contributor

An employed contributor² is a person aged 16 years or over and under 66 years, who is employed under a contract of service (i.e. an employee). Employees under the age of 16 years and employees aged 66 years or over, are exempt from paying PRSI. In relation to a married couple or civil partnership, the liability to PRSI applies to each spouse or partner separately.

4. Reckonable Earnings

Employee PRSI is payable on an employee's reckonable earnings, which is an employee's gross pay including the notional value of any Benefit in Kind (BIK) which is taxable through payroll and certain forms of share-based remuneration (i.e. share awards, appropriation of shares from an Approved Profit Sharing Scheme (APSS) and any gain from a Save As You Earn (SAYE) scheme). Any salary or wages sacrificed under a Revenue approved salary sacrifice scheme (i.e. deductions for an approved travel pass, a bicycle under the cycle to work scheme or for shares under an APSS) can be deducted from gross pay to arrive at an employee's reckonable earnings.

For employer PRSI purposes, reckonable earnings are reduced by the amount of Additional Superannuation Contribution (ASC) payable by Public Servants and the amount of any share based remuneration received by an employee. This can result in employer PRSI being calculated on a lower earnings figure than the reckonable earnings used for the calculation of employee PRSI. Where this results in a different PRSI class applying to the employee and to the employer, the payslip and Payroll Submission must be made at the employee's subclass.

The following payments are not regarded as reckonable earnings for PRSI purposes:

- Statutory Redundancy,
- Ex-gratia termination payments, whether taxable or not,
- Payments received from the DSP (e.g. Illness Benefit, Maternity Benefit, etc.),

¹ Social Welfare Consolidation Act 2005, Section 2

² Social Welfare Consolidation Act 2005, Section 12

- Employer contributions to a pension or Personal Retirement Savings Account (PRSA).

5. PRSI Classes and Subclasses

The most important step in calculating the PRSI payable by an employee is to determine his correct PRSI class, as different contribution rates apply to different classes. The DSP publish a schedule of the PRSI contribution rates and a user guide: Leaflet SW14; a copy of which is included at the start of this text. It may also be downloaded from the DSP website: <https://www.gov.ie/en/collection/06bf07-prsi-contribution-rates-and-user-guide-sw14/>

Out of the eleven different PRSI classes, most employees fall within Class A. In addition, each class is divided into a number of subclasses, determined primarily by the amount of a person's earnings in a pay period.

PRSI Class A is regarded as the default PRSI class for an employee, and a good rule of thumb is to classify the income of every employee as being PRSI class A, unless you know a specific reason why it should be another class.

Class A applies to reckonable earnings from an industrial, commercial and service-type employment where the individual is employed under a contract of service, where the level of reckonable earnings is €38 or more per week from all employments. Earnings from Civil and Public Service employments (e.g. teachers, Gardaí, nurses, etc.) recruited since 6th April 1995 are insurable under PRSI Class A. An employee can have contributions under various subclasses of Class A during the year, varying as the level of his earnings increase, or decrease, in any given contribution week throughout the year.

Employer PRSI of 11.05% is payable under Class A where pay for employer PRSI purposes exceeds €441 per week, €882 per fortnight or €1,911 per month (subclass A1). Employer PRSI of 8.8% is payable under Class A where pay for employer PRSI purposes does not exceed €441 per week, €882 per fortnight or €1,911 per month (subclasses AO, AX and AL).

Employee PRSI is calculated as 4% of the employee's reckonable earnings where the earnings exceed €352 per week, €704 per fortnight or €1,525 per month, subject to the operation of the PRSI Credit which is outlined below. An employee contribution is not payable where reckonable earnings do not exceed €352 per week, €704 per fortnight or €1,525 per month.

The PRSI Class A subclasses are as follows:

Subclass AO applies to employees with earnings of €38 or more per week, €76 per fortnight or €165 per month and not more than €352 per week, €704 per fortnight or €1,525 per month.

Subclass AX applies to employees with earnings in excess of €352 per week, €704 per fortnight or €1,525 per month and no more than €424 per week, €848 per fortnight or €1,837 per month.

Subclass AL applies to employees with earnings in excess of €424 per week, €848 per fortnight or €1,837 per month and no more than €441 per week, €882 per fortnight or €1,911 per month.

Subclass A1 applies to employees with earnings in excess of €441 per week, €882 per fortnight or €1,911 per month.

CHAPTER 10

Example 1

Paula earns €120 per week which is liable to PRSI Class A. State what subclass applies and calculate the employee and employer PRSI liabilities.

Solution 1

PRSI subclass:	AO
Employee PRSI:	Not payable as earnings don't exceed €352 per week.
Employer PRSI:	€120 @ 8.8% = €10.56

Example 2

Elaine earns €475 per week which is liable to PRSI Class A. State what subclass applies and calculate the employee and employer PRSI liabilities.

Solution 2

PRSI subclass:	A1
Employee PRSI:	€475 @ 4% = €19.00
Employer PRSI:	€475 @ 11.05% = €52.48

Example 3

Tom earns €1,400 per fortnight which is liable to PRSI Class A. State what subclass applies and calculate the employee and employer PRSI liabilities.

Solution 3

PRSI subclass:	A1
Employee PRSI:	€1,400 @ 4% = €56.00
Employer PRSI:	€1,400 @ 11.05% = €154.70

Example 4

Fiona earns €1,400 per month which is liable to PRSI Class A. State what subclass applies and calculate the employee and employer PRSI liabilities.

Solution 4

PRSI subclass:	A0
Employee PRSI:	Not payable as earnings don't exceed €1,525 per month.
Employer PRSI:	€1,400 @ 8.8% = €123.20

Example 5

Frances received €1,000 of share based remuneration in addition to her weekly salary of €750. Calculate the employee and employer PRSI liability under Class A.

Solution 5

Employee PRSI:	€1,750 x 4% =	€70.00
Employer PRSI:	€1,750 - €1,000* = €750 @ 11.05% =	€82.87

*Share based remuneration is not liable to employer PRSI.

5.1 Tapered PRSI Credit

A tapered PRSI credit is available to employees with reckonable earnings between €352.01 and €424 per week, €704.01 and €848 per fortnight or €1,525.01 and €1,837 per month (i.e. in any pay period where the earnings are insurable at PRSI subclass AX).

PRSI is initially calculated in the normal way. The PRSI liability is then reduced by any PRSI credit that the employee is entitled to. The PRSI credit applies per pay period – i.e. it is not cumulative and unused credits cannot be carried forward to future pay periods.

For weekly paid employees, the maximum PRSI credit is €12 which is available to employees who earn €352.01 in any contribution week. If an employee earns in excess of €352.01 in any contribution week, the PRSI credit is reduced by one-sixth of reckonable earnings in excess of €352.01 and it is lost completely if the employee's earnings exceed €424.

For fortnightly paid employees, the maximum PRSI credit is €24 which is available to employees who earn €704.01 in any fortnight. If the employee earns in excess of €704.01 in any fortnight, the PRSI credit is reduced by one-sixth of reckonable earnings in excess of €704.01 and it is lost completely if the employee's earnings exceed €848.

For monthly paid employees, the maximum PRSI credit is €52 which is available to employees who earn €1,525.01 in any month. If the employee earns in excess of €1,525.01 in any month, the PRSI credit is reduced by one-sixth of reckonable earnings in excess of €1,525.01 and it is lost completely when the employee's earnings exceed €1,837.

A 3 step approach should be adopted when calculating an employee's PRSI liability which involves the PRSI credit (i.e. for any pay period the employee is insurable under subclass AX and AL):

- Step 1:** Calculate the employee's PRSI liability at 4% under Class A.
Step 2: Calculate the amount of PRSI credit due to the employee.
Step 3: Deduct the available PRSI credit from the 4% PRSI charge to arrive at the employee's PRSI liability for that pay period.

The PRSI Credit does not affect the employer PRSI liability.

Example 6

Elaine earns €360 per week which is liable to PRSI Class A. State what subclass applies and calculate the employee and employer PRSI liability.

Solution 6

PRSI subclass: AX

Employee PRSI:

Step 1: PRSI Class A @ 4%	€360 @ 4% =	€14.40
Step 2: PRSI credit - Maximum weekly PRSI credit	€12.00	
Reduced by 1/6 th of earnings in excess of €352.01		
(€360 - €352.01 = €7.99 / 6) =	<u>€1.33</u>	
Step 3: Less PRSI credit available		€10.67
Employee PRSI		<u>€3.73</u>
Employer PRSI	€360 @ 8.8% =	€31.68

Example 7

Sharon earns €420 per week which is insurable under PRSI Class A. State what subclass applies and calculate the employee and employer PRSI liabilities.

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Solution 7

PRSI subclass: AX

Step 1: PRSI Class A @ 4%	$\text{€}420 @ 4\% =$	$\text{€}16.80$
Step 2: PRSI credit - Maximum weekly PRSI credit Reduced by 1/6 th of earnings in excess of €352.01 $(\text{€}420 - \text{€}352.01 = \text{€}67.99 / 6) =$		$\text{€}12.00$
Step 3: Less PRSI credit available Employee PRSI		<u>$\text{€}11.33$</u>
		<u>$\text{€}0.67$</u>
Employer PRSI	$\text{€}420 @ 8.8\% =$	$\text{€}16.13$
		$\text{€}36.96$

Example 8

Sonia earns €750 per fortnight which is insurable under PRSI Class A. State what subclass applies and calculate the employee and employer PRSI liabilities.

Solution 8

PRSI subclass: AX

Step 1: PRSI Class A @ 4%	$\text{€}750 @ 4\% =$	$\text{€}30.00$
Step 2: PRSI credit - Maximum fortnightly PRSI credit Reduced by 1/6 th of earnings in excess of €704.01 $(\text{€}750 - \text{€}704.01 = \text{€}45.99 / 6) =$		$\text{€}24.00$
Step 3: Less PRSI credit available Employee PRSI		<u>$\text{€}7.66$</u>
		<u>$\text{€}16.34$</u>
Employer PRSI	$\text{€}750 @ 8.8\% =$	$\text{€}13.66$
		$\text{€}66.00$

Example 9

Shane earns €1,825 per month which is insurable under PRSI Class A. State what subclass applies and calculate the employee and employer PRSI liabilities.

Solution 9

PRSI subclass: AX

Step 1: PRSI Class A @ 4%	$\text{€}1,825 @ 4\% =$	$\text{€}73.00$
Step 2: PRSI credit - Maximum monthly PRSI credit Reduced by 1/6 th of earnings in excess of €1,525.01 $(\text{€}1,825 - \text{€}1,525.01 = \text{€}299.99 / 6) =$		$\text{€}52.00$
Step 3: Less PRSI credit available Employee PRSI		<u>$\text{€}50.00$</u>
		<u>$\text{€}2.00$</u>
Employer PRSI	$\text{€}1,825 @ 8.8\% =$	$\text{€}71.00$
		$\text{€}160.60$

Subclasses A8 and A9 apply to participants in Community Employment (CE) schemes. Subclass A8 applies where earnings do not exceed €352 per week and employee PRSI is not payable. Subclass A9 applies where weekly earnings exceed €352 per week and employee PRSI is payable at 4% with the employee being entitled to the appropriate PRSI credit where his weekly earnings do not exceed €424 (as previously explained under subclass AX). In Community Employment schemes (Subclass A8 or A9) the employer contribution is 0.5%. Community Employment supervisors are insurable at Class A (AO, AX, AL or A1) in the normal way.

Example 10

John is a participant on a CE scheme and is paid €240 per week. Calculate the employee and employer PRSI liability.

Solution 10

Employee PRSI	Not payable as earnings don't exceed €352 per week
Employer PRSI	$\text{€}240 \times 0.5\% = \text{€}1.20$

Class B applies to permanent and pensionable civil servants, registered doctors and dentists employed in the Civil Service and Gardaí recruited prior to 6th April 1995. The employee contribution under Class B is 0.9% of reckonable earnings, which increases to 4% of reckonable earnings in excess of €1,443 per week, €2,886 per fortnight or €6,253 per month. Employee PRSI is payable on the total earnings where the earnings exceed €352 per week. An employee contribution is not payable where reckonable earnings do not exceed €352 per week. For employer PRSI purposes, reckonable earnings are reduced by the amount of ASC payable by public servants. The employer contribution under Class B is 2.01%.

Example 11

Peter is a member of An Garda Síochána since 1990 and earns €1,500 per week. He pays ASC of €96.43 per week. Calculate the employee and employer PRSI liability.

Solution 11

Employee PRSI	First	$\text{€}1,443 @ 0.9\% =$	€12.99
	Balance ($\text{€}1,500 - \text{€}1,443$)	= $\text{€}57 @ 4\% =$	€2.28
			€15.27

Employer PRSI	$(\text{€}1,500 - \text{€}96.43) =$	$\text{€}1,403.57 @ 2.01\% =$	€28.21
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Class C applies to Commissioned Army Officers and members of the Army Nursing Service recruited prior to 6th April 1995. The employee contribution payable under Class C is 0.9%, which increases to 4% on reckonable earnings in excess of €1,443 per week, €2,886 per fortnight or €6,253 per month. Employee PRSI is payable on the total earnings where the earnings exceed €352 per week. An employee contribution is not payable where reckonable earnings do not exceed €352 per week. For employer PRSI purposes, reckonable earnings are reduced by the amount of ASC payable by public servants. The employer contribution is 1.85%.

Class D applies to permanent and pensionable employees in the Public Service, other than those mentioned in Classes B and C, (e.g. a teacher, a nurse, a local authority employee, etc.) recruited prior to 6th April 1995. The employee contribution under Class D is 0.9%, which increases to 4% on reckonable earnings in excess of €1,443 per week, €2,886 per fortnight or €6,253 per month. Employee PRSI is payable on the total earnings where the earnings exceed €352 per week. An employee contribution is not payable where reckonable earnings do not exceed €352 per week. For employer PRSI purposes, reckonable earnings are reduced by the amount of ASC payable by Public Servants. The employer contribution is 2.35%.

Example 12

Jerry is employed as a teacher since 1990 and earns €890 per week. His weekly ASC liability is €22.65. Calculate the employee and employer PRSI liabilities.

CHAPTER 10

Solution 12

Employee PRSI	$\text{€890} @ 0.9\% =$	€8.01
Employer PRSI	$(\text{€890} - \text{€22.65}) = \text{€867.35} @ 2.35\% =$	€20.38

Class H applies to Non Commissioned Officers (NCOs) and enlisted personnel of the Defence Forces. The employee contribution under Class H is 3.9% of the total earnings where the earnings exceed €352 per week with the employee being entitled to the appropriate PRSI credit where his weekly earnings do not exceed €424 (as previously explained under subclasses AX and AL). An employee contribution is not payable where reckonable earnings do not exceed €352 per week. For employer PRSI purposes, reckonable earnings are reduced by the amount of ASC payable by Public Servants. The employer contribution is 10.35%.

Class K applies to income deriving from positions of certain public office holders, namely the President, the Taoiseach, the Tánaiste, Ministers of State, members of either House of the Oireachtas (i.e. TDs and Senators), members of the judiciary and military judges, a member of the European Parliament (MEP) for a constituency in the State, the Attorney General and the Comptroller and Auditor General. Class K only refers to the income derived from any of these sources regardless of the age of the public office holder, and any other income of the individual is classified for PRSI purposes separately. The office holders referred to above are not considered to be employees.

The contribution payable under Class K is 4% of the reckonable emoluments paid to that person in his capacity as a public office holder, where such emoluments are greater than €100 per week. Where the emoluments do not exceed €100 per week, no contribution is payable, and it should be recorded under Class M for that pay period. The office holder will be entitled to claim a refund of any contributions paid under Class K if his total emoluments arising from a public office do not exceed €5,200 for the current tax year. The public body is required to deduct the Class K contribution from each individual. There is no employer contribution payable under Class K.

Example 13

Pat holds a ministerial office and is paid €1,850 per week. His weekly ASC liability is €40.68. Calculate the PRSI payable on this income under Class K.

Solution 13

Employee PRSI:	$\text{€1},850 @ 4\% = \text{€74.00}$
Employer PRSI:	No contribution payable

Any reckonable emoluments (e.g. directors fees and emoluments arising from the public office as an elected member of a local authority) of a modified rate contributor (individuals insured under Classes B, C and D) which are taxable under the PAYE system are also liable to PRSI which must be deducted at source through payroll under Class K, regardless of the amount paid or earned i.e. the €100 per week or €5,200 annual threshold should be ignored and the individual should pay 4% PRSI on this amount, with no entitlement to any DSP benefits in respect of this contribution.

Example 14

Ben is employed as a hospital consultant and is paid €12,500 per month which is insurable under Class D. His monthly ASC liability is €1,000. In addition, Ben owns a company which provides private medical care and he receives director's fees of €8,000 per month from this company. Calculate the monthly PRSI:

- (a) In respect of his public service income, and
- (b) In respect of his monthly director's fees.

Solution 14

(a) Employee PRSI	First Balance ($\text{€}12,500 - \text{€}6,253$) =	$\text{€}6,253 @ 0.9\% =$ $\text{€}6,247 @ 4\% =$	$\text{€}56.28$ $\text{€}249.88$ $\text{€}306.16$
Employer PRSI	$(\text{€}12,500 - \text{€}1,000)$ =	$\text{€}11,500 @ 2.35\% =$	$\text{€}270.25$

- (b) Class K applies to his director's fees:

Employee PRSI	$\text{€}8,000 \times 4\% =$	$\text{€}320.00$
Employer PRSI	<i>Not payable under Class K</i>	

Class K also applies to the unearned income (e.g. rental income, deposit interest, dividends, etc.) of an employee or person in receipt of an occupational pension, assuming the individual is aged 16 years or over and under 66 years and is regarded as a chargeable person for tax purposes. This is covered in detail in the chapter entitled "PRSI – Advanced Issues".

Class J refers to employees aged 16 or over and under 66 years with reckonable earnings below €38 per week. It also applies to employment income of individuals aged 66 years or over, and to income received from a "subsidiary" employment.

The following employments are considered to be subsidiary employments:

- Where an individual is employed by a spouse; or employed by a prescribed relative in the home or farm of that prescribed relative in which both the employer and employee reside; this will be regarded as his principal means of livelihood and any additional employments will be regarded as a subsidiary employment.
- Where a Civil or Public Servant, who is insurable at a modified rate of insurance (Classes B, C, D, and H) in his main employment, takes up an additional employment, which is adopted as a subsidiary employment only and not as a principal means of livelihood shall be regarded as a subsidiary employment. An example would be a schoolteacher who is a Class D contributor in respect of his teacher's salary who also took a part-time job in the summer months. His income from this summer job would be regarded as a subsidiary employment for PRSI purposes and therefore Class J applies to the income from this part-time employment. This does not apply to Civil or Public Servants who are insurable under Class A in their main employment, as any subsidiary employment will also be insurable under Class A, unless it is in connection with the State exams or elections.
- Employment as attendant at or in connection with examinations (i.e. Junior Certificate and Leaving Certificate) held by the State Examinations Commission.
- Employment involving occasional service only, as presiding officer or as poll clerk at Presidential elections, elections to the European Parliament, general elections, bye-elections, local elections or at referenda.
- Employment as a member of the Reserve Defence Forces involving service in either the Army Reserve or Naval Service Reserve for any period not in excess of 21 consecutive days.

There is no employee contribution payable under Class J and the employer contribution is 0.5% of reckonable earnings.

CHAPTER 10

Example 15

Joe is 68 years of age and is employed. He earns €510 per week. Calculate the PRSI payable under Class J.

Solution 15

Employee PRSI No contribution payable

Employer PRSI €510 @ 0.5% = €2.55

Example 16

James is employed by the State Examinations Commission as an attendant for the Leaving Certificate and is paid €250 per week. Calculate the PRSI payable under Class J.

Solution 16

Employee PRSI No contribution payable

Employer PRSI €250 @ 0.5% = €1.25

Example 17

James is employed as a teacher by the Department of Education. He pays PRSI Class D on his salary. He is also employed in his local shop during the summer months. What PRSI class applies to this payment?

Solution 17

Class J applies to this payment as it is a subsidiary employment, and his main employment is insurable under a modified rate (Class D).

Class S applies to individuals in receipt of reckonable income or reckonable emoluments, such as self-employed people (including a partner in a partnership), and a person who assists in the running of the business of his or her self-employed spouse or civil partner but not as an employee;³ company directors who directly or indirectly own or control 50% or more of the ordinary share capital of that company;⁴ non-executive company directors, people in business on their own account and people (excluding employees and people in receipt of an occupational pension) with income from investments, rents and maintenance. The DSP publish A Guide to PRSI for the Self-Employed (SW74) which is available on their website at: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/38671/0aa2cf3d831a4076b1b6208e1287d9f9.pdf#page=1>

Note: a director who is also a modified rate contributor is insurable under Class K in respect of his reckonable emoluments or reckonable income – see Class K above.

Emoluments arising from the public office as an elected member of a local authority (i.e. Town, City and County Councillors) is insurable under Class S, unless the individual is aged 66 years or over (Class M applies) or a modified rate contributor (Class K applies).

Reckonable income refers to income which is outside the scope of the PAYE system and on which tax is collected through the self-assessment system (e.g. income earned from a trade or profession, rental or investment income, etc.). **Reckonable emoluments** refers to income which is not derived from insurable employment but is taxed under the PAYE system (e.g. salary paid

³ Social Welfare and Pensions Act 2014, Section 16

⁴ Social Welfare and Pensions (Miscellaneous Provisions) Act 2013

to directors who directly or indirectly own 50% or more of the ordinary share capital of that company).

A self-employed contribution of 4% of reckonable income and/or reckonable emoluments is payable under Class S, subject to a minimum contribution of €500 per year. **Note:** Employers are not required to monitor this minimum annual contribution of €500. There is no employer PRSI contribution payable under Class S. A self-employed contribution is not payable in the current tax year where total income for PRSI purposes does not exceed €5,000.

Example 18

Mary is a PRSI Class S Company director and earns €1,020 per week. Calculate the PRSI payable under Class S.

Solution 18

<i>Employee PRSI</i>	$\text{€1,020} @ 4\% = \text{€40.80}$
<i>Employer PRSI</i>	<i>Not payable under Class S</i>

Class M refers to people with a nil PRSI contribution liability (e.g. income received by an individual under the age of 16, payments received by way of a pension, people normally within Class K who have a nil liability (i.e. certain public office holders, as defined, with income of less than €100 per week) and reckonable income or emoluments received by a person aged 66 or over. Individuals who sit on State or State sponsored Committees and Boards are not liable to pay PRSI on this income and it should be recorded under Class M.

Example 19

Sarah, aged 15, was employed part-time during the summer holidays and earned €200 per week. Calculate the PRSI payable on this income.

Solution 19

<i>Employee PRSI</i>	<i>Not payable under Class M</i>
<i>Employer PRSI</i>	<i>Not payable under Class M</i>

Class E refers to Ministers of Religion employed by the Church of Ireland. Class E is paid through the Special Collection System. The employee PRSI contribution under Class E is 3.33% of reckonable earnings and the employer contribution is 6.87% of reckonable earnings. A maximum PRSI Credit of €10 applies to Class E contributors who have gross weekly income of €352.01. This PRSI Credit is reduced by one-sixth of the income in excess of €352.01 and is reduced to nil where the weekly earnings exceed €412.

Class P is an optional contribution which can be paid by self-employed people whose principal means of livelihood comes from share fishing and are already paying PRSI under Class S. This contribution is in addition to PRSI already being paid under Class S. The benefits for Class P contributors are limited Jobseeker's Benefit, limited Illness Benefit and Treatment Benefits.

The rate of PRSI payable under Class P which is calculated on the individual's annual income is as follows, subject to a minimum contribution of €200:

<i>First €2,500 per year</i>	<i>Nil</i>
<i>Balance over €2,500</i>	<i>4%</i>

CHAPTER 10

5.1 PRSI Thresholds

The following are the weekly, fortnightly and monthly thresholds to determine:

- (i) If an employee contribution is payable under Classes A, B, C, D and H,
- (ii) If PRSI is payable at 4% under Classes B, C and D,
- (iii) If employer PRSI is payable under Class A at 11.05% or the reduced rate of 8.8%,
- (iv) If a public office holder is liable to pay a contribution under Class K.

	PRSI Class		Weekly	Fortnightly	Monthly
(i)	A, B, C, D & H	Employee threshold	€352.00	€704.00	€1,525.00
(ii)	B, C & D	Employee threshold	€1,443.00	€2,886.00	€6,253.00
(iii)	A	Employer threshold	€441.00	€882.00	€1,911.00
(iv)	K	Individual	€100.00	€200.00	€433.00

Example 20

Clare earns €28,500 per year (€1,096.16 per fortnight). Calculate the fortnightly PRSI liabilities payable on this income under Class A.

Solution 20

Employee PRSI	€1,096.16 @ 4% =	€43.85
Employer PRSI	€1,096.16 @ 11.05% =	€121.12

Example 21

Ann earns €2,000 per month. Calculate the monthly PRSI liabilities payable on this income under Class A.

Solution 21

Employee PRSI	€2,000 @ 4% =	€80.00
Employer PRSI	€2,000 @ 11.05% =	€221.00

5.2 Change in PRSI Class on reaching Pension Age

The PRSI class which applies to an employee's salary depends on the age of the employee on **the date the payment is made**. If an employee who normally pays PRSI under Class A turns 66 mid-month then his PRSI class would change to Class J from his next pay date.

This means that the employee would pay no PRSI, and his employer would pay 0.5% under Class J. However, even though Class J rates are deducted, Class A should be recorded against the appropriate number of insurable weeks. This ensures that the employee does not lose any Class A contributions.

This may prove difficult to administer on payroll software.

Example 22

Mike is an employee and is paid monthly. He turned 66 on the 10th June but will continue in his employment. He was paid his monthly salary of €4,000 on 28th June. Calculate the monthly PRSI liabilities payable and state what PRSI class should be recorded against his June salary.

Solution 22

As he is aged 66 on the pay date, PRSI is calculated under Class J as follows:

<i>Employee PRSI</i>	$\text{€}4,000 @ 0\% =$	<i>Nil</i>
<i>Employer PRSI</i>	$\text{€}4,000 @ 0.5\% =$	$\text{€}20.00$

However, PRSI Class A can be recorded for the entire month of June.

6. Job-Sharers

Employees who opt to avail of job-sharing should be made aware of how their chosen work pattern may affect the number of PRSI contributions they may be awarded in a PRSI contribution year. As per DSP guidelines, a PRSI contribution is not payable in respect of any contribution week where an employee is not scheduled to work and he receives no payment. However, he is entitled to a contribution week once he receives a payment in any week.

Example 23

Mary is a job-sharer and works Monday to Thursday every second week. John is also a job-sharer and works Tuesday to Sunday every second week. As 1st January 2023 was a Sunday, the PRSI contribution week for 2023 runs from Sunday to Saturday. Calculate the number of PRSI contributions due for Mary and John for the current tax year. Both employees are paid every second week.

Solution 23

As Mary's working week coincides with every second PRSI contribution week, for the current tax year, she should only be awarded 26 insurable weeks. However, as John's working week spans 2 contribution weeks, for the current tax year, he is entitled to 52 insurable weeks.

7. JobsPlus

The JobsPlus Incentive came into effect on 1st July 2013. JobsPlus is operated by the DSP and provides a financial incentive to employers to employ a person who is long-term unemployed. In order to avail of the scheme the employer must hold a current Tax Clearance Certificate.

JobsPlus provides an employer with a direct payment, payable monthly in arrears, over a 2 year period. There are 2 levels of payment under the JobsPlus scheme:

- A payment of €7,500 will be made to the employer over a 2 year period (€312.50 per month) where he employs a person who was unemployed for at least 312 days (12 months) in the previous 18 months. Where the individual is aged under 25 years of age, he is only required to be unemployed for 104 days in the previous 6 months; and
- A payment of €10,000 will be made to the employer over a 2 year period (416.67 per month) where he employs a person who was unemployed for at least 936 days (3 years) in the previous 42 months (3.5 years). Where the individual is aged 50 or over, he is only required to be unemployed for 312 days (12 months) in the previous 18 months.

These payments are not considered as income of the employer for Corporation tax or Income tax purposes.

In order to qualify, the job must be:

- A full time position for a minimum of 30 hours per week,
- For at least 4 days in any seven day period, and
- A new position and not arise as a result of displacement of an existing employee.

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The scheme cannot be used for casual or seasonal employment, however if a position ceases for a genuine reason there is no obligation on the employer to repay money already received under the scheme. The employer must, however, notify the DSP immediately.

In order to qualify for JobsPlus, the employee must have been unemployed for the qualifying period as outlined above. Only persons in receipt of Jobseekers Benefit, Jobseekers Allowance or signing for Jobseekers Credits will be eligible under the JobsPlus Incentive.

Individuals in receipt of the One Parent Family Payment or Disability Allowance are not eligible for JobsPlus, nor can an employer employ a close family member under the scheme.

Employees qualifying under the JobsPlus scheme can keep their medical card for 3 years from the date of return to work. Secondary benefits, such as rent or mortgage subsidy, family income supplement, etc. may also be retained subject to certain income limits and other conditions.

Employers can register their details and employees can check their eligibility online at www.jobsplus.ie. If an individual registers and is eligible under the JobsPlus scheme, he will receive a two part ‘JP1 Form’ from the DSP. Part A confirms the individual’s eligibility and the rate of payment for a prospective employer. If the individual obtains employment, Part A should be signed by the individual and given to the employer. Part B should be completed by the potential employer and the completed form should be returned to the DSP. The employee will be subject to Income Tax, PRSI and USC in the same manner as any other employee.

8. PRSI Overpayments

Many employers are inadvertently making overpayments of both employee PRSI and employer PRSI, and not just in relation to miscalculations. PRSI overpayments can arise where (this is not an exhaustive list):

- Class A continues to be applied to the earnings of an employee aged 66 years or over. Class J is the correct class.
- Class A is applied to the employment income of an individual under 16 years of age. Class M is the correct class.
- Class A is applied to a subsidiary employment taken up by a modified rate contributor (Class J is the correct class), as the subsidiary employer may not be aware that the individual is a modified rate contributor in his main employment.
- Class A is applied to a controlling director. Class S is the correct class.
- The individual holds an A1 Portable Document or Certificate of Coverage and is exempt from PRSI in Ireland.
- PRSI is applied to the employee’s full salary while he/she mandated his Illness, Maternity, Adoptive, Paternity or Parent’s Benefit to his employer.
- PRSI is applied to an ex-gratia termination payment which is exempt from PRSI.
- Employer PRSI is applied to share based remuneration which is not liable to employer PRSI.

9. PRSI Refunds

If an employee overpays PRSI, the employee can apply to the PRSI Refunds Section of the DSP for a PRSI refund <https://www.gov.ie/en/service/5706e5-prsi-refunds/>. Overpayments relating to any of the previous 4 tax years can be claimed from the DSP. If an employer identifies an overpayment in the current tax year, the employer can correct this and make the refund through payroll.

The quickest way for an employee to apply for a refund is to apply online via MyWelfare www.mywelfare.ie which requires the individual to hold a Public Services Card. If an employee cannot use MyWelfare, he can download and complete a PRSI REF1 Form <https://www.gov.ie/en/service/5706e5-prsi-refunds/> which is available on the DSP website. Employers can apply for a refund of employer PRSI using a PRSI REF2 Form which is also available on the DSP website.

However, if an employee paid PRSI in a particular week because his earnings exceeded the weekly PRSI threshold of €352, he is not entitled to a PRSI refund at the end of the year on the basis that his annual earnings do not exceed €18,304 (€352 x 52 weeks). For example, a Class A employee who usually earns €340 per week would not normally pay PRSI as his weekly earnings are less than €352. However, if in any week he earns over €352 he will pay PRSI in that week. At the end of the year, this employee cannot claim a refund of PRSI paid in these weeks regardless of the fact that his annual reckonable earnings do not exceed €18,304.

10. PRSI Records

Employers are obliged to maintain and retain records for the last 6 complete tax years in respect of all employees to whom earnings or emoluments have been paid, to include:⁵

- Earnings or emoluments paid to each employee or director,
- PRSI contributions made by both employers and employees,
- The dates of commencement and cessation of employment where they occur during that tax year,
- PRSI contribution class for each pay period,
- Number of weeks of insurable employment or self-employment, and
- Where an employee falls into two or more PRSI contribution classes in a tax year, details of the number of weeks and contributions at each class.

When an employer submits his Payroll Submission to Revenue, it contains the above information for each employee who was paid that pay period. The DSP has access to the relevant PRSI information contained in a Payroll Submission.

11. Summary of PRSI Classes

The following is a summary of the various PRSI Classes.

PRSI Class	Employer Contribution Rate	Employee Contribution Rate	Weekly / Monthly Earnings Threshold *
A	8.8% / 11.05%**	4%	€352 / €1,525
B	2.01%		
C	1.85%		
D	2.35%		
H	10.35%	3.9%	N/A
J	0.5%	N/A	N/A
K	N/A	4%	€100 / €434****
S	N/A	4%	N/A
M	N/A	N/A	N/A
E	6.87%	3.33%	€352 / €1,525
P	N/A	4%	€2,500*****

⁵ Social Welfare (Consolidated Contributions and Insurability) Regulations 1996, Regulation 17. S.I. 312/1996

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* No PRSI liability arises where an employee's weekly earnings do not exceed the weekly/monthly earnings threshold.

** Under Class A, employer PRSI is calculated at 8.8% on earnings up to and including €441 per week and 11.05% on total earnings, where earnings exceed €441 per week.

***Under Classes B, C and D, PRSI at 0.9% applies to the first €1,443 per week (€6,253 per month) and 4% PRSI applies to any excess amount.

**** This threshold under Class K does not apply to modified contributors with reckonable emoluments.

*****Under Class P, no PRSI is payable on the first €2,500 per year and 4% is payable on the balance of the income.

11.1 PRSI Class A Summary

- No employee PRSI is payable where reckonable earnings do not exceed €352 per week, €704 per fortnight or €1,525 per month.
- A tapered PRSI credit applies in respect of earning between €352.01 and €424 per week, €704.01 and €848 per fortnight or €1,525.01 and €1,837 per month.
- A reduced rate of 8.8% employer PRSI is payable where an employee earns between €38 and €441 per week inclusive. Where an employee earns in excess of €441 per week 11.05% employer PRSI is payable.
- Where weekly earnings are less than €38 per week, Class J contributions are payable. The employee will have a nil liability, and the rate of employer PRSI is 0.5%.

CHAPTER 11

PRSI – Advanced Issues

- 1. Introduction**
 - 2. Reckonable Earnings**
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 - 10. Excepted Self-Employed Contributors**
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 - 20. Enforceable Maintenance Payments**
-

1. Introduction

As most people working in payroll are aware, there are a number of different PRSI classes (and even more subclasses!) and the rules and regulations for these can be difficult to understand. The various different PRSI classes, the categories of income which fall into each class and the rates applicable to each class were addressed in the chapter entitled “Pay Related Social Insurance”. Many people take this information for granted, and never stop to question, or seek the source of, the information. In many cases it has been passed on by a predecessor, as is a common occurrence in the operation of payroll.

The objective of this chapter is to give an understanding of the relevant legislation governing the operation of PRSI, primarily the **Social Welfare Consolidation Act 2005**, as amended. The majority of the Act deals with social welfare benefits and entitlements, however, some of the early sections in the Act deal with PRSI contributions. Sections 12 to 19 deal with employees and the payment of employment contributions. In general, employees aged 16 years or over and under

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66 are compulsorily insured as employees and are referred to in the Act as “employed contributors”.

Sections 20 to 23 deal with the payment of self-employed contributions. Generally speaking, self-employed persons aged 16 years or over and under 66, are compulsorily insured as self-employed contributors if they are in receipt of reckonable income or reckonable emoluments.

Voluntary contributors and voluntary contributions are covered in sections 24 to 27. Sections 31 to 38 cover some general provisions in relation to PRSI, for example employment outside the State and the repayment of PRSI in certain situations.

The **Social Welfare Consolidation Act 2005** encompasses the legislation governing the operation of PRSI. How the legislation is to be applied on a day to day basis is outlined in regulations, most notably the **Social Welfare (Consolidated Contributions and Insurability) Regulations 1996**. The full text of the Act and Regulations can be found in the following links:
<http://www.irishstatutebook.ie/2005/en/act/pub/0026/index.html>
<http://www.irishstatutebook.ie/1996/en/si/0312.html>

Amendments to the **Social Welfare Consolidation Act 2005** are generally contained in the Social Welfare Acts. Some notable changes were included in the **Social Welfare Act 2011**, **Social Welfare and Pensions Act 2012**, **Social Welfare and Pensions (Miscellaneous Provisions) Act 2013**, **Social Welfare and Pensions Act 2013** and **Social Welfare and Pensions Act 2015** and **Social Welfare, Pensions and Civil Registration Act 2018**. Changes to the consolidated regulations of 1996 are generally carried out by way of a new statutory instrument, the most notable of which were included in the **Social Welfare (Consolidated Contributions and Insurability) (Amendment) Regulations 2012** and **Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No. 2) Regulations 2018**. The full text of these Acts and Regulations can be found on the Irish Statute Book website.

References to ‘the Act’ in this chapter refer to **Social Welfare Consolidation Act 2005** unless otherwise stated.

2. Reckonable Earnings

Employee PRSI and employer PRSI can be collectively referred to as ‘employment contributions’. Employment contributions are payable based on an employee’s ‘reckonable earnings’. Reckonable earnings include salary, wages, fees, bonuses, commissions, overtime, sick pay, holiday pay, notional value of a benefit-in-kind, etc.

It should be noted that an employee’s reckonable earnings are not necessarily equal to his taxable pay or gross pay for USC purposes. For example, termination payments are taxable and liable to USC, but are not regarded as reckonable earnings; tax relief is available on employee pension contributions, but PRSI or USC relief is not available.

‘Reckonable earnings’ is defined in Section 2 of the **Social Welfare Consolidation Act 2005** as amended,¹ and reads as follows:

‘reckonable earnings’ means subject to section 13(2)(da), in the case of an employed contributor, not being a special contributor, emoluments derived from insurable employment or insurable

¹ Amended by Social Welfare and Pensions Act 2012, Section 8

(occupational injuries) employment (other than such emoluments that may be prescribed) to which Chapter 4 of Part 42 of the Act of 1997 applies, but without regard to Chapter 1 of Part 44 of that Act,.....

....and reckonable earnings shall include-

- (a) share-based remuneration realised, acquired or appropriated, as the case may be, on or after 1 January 2011, and*
- (b) the specified amount within the meaning of section 825C of the Act of 1997.*

Chapter 4 of Part 42 of the Act of 1997 refers to the PAYE system. Income, including the notional value of a BIK, which is taxable under the PAYE system is regarded as reckonable earnings for PRSI purposes. It includes share based remuneration (with the exception of any qualifying share options granted under the Key Employee Engagement Programme (KEEP) introduced in 2018) and includes the specified amount which qualifies for tax relief under the Special Assignee Relief Programme.

Chapter 1 of Part 44 of the Act of 1997 refers to the assessment of married couples and civil partners. Joint assessment does not apply to PRSI which is calculated separately for each spouse.

‘Section 13(2)(da)’ of the Act, as outlined in the above definition,² allows for the deduction of ASC payable by public servants, and the amount of any share based remuneration, from an employee’s reckonable earnings before calculating the employer PRSI contribution (i.e. share-based remuneration (except KEEP options) and ASC payable by public servants are liable to employee PRSI but are not liable to employer PRSI).

The Act also makes reference to a special contributor, who is someone in receipt of income which is not subject to tax under the PAYE system (e.g. an employee who has been assigned abroad by his employer who holds a PAYE Exclusion Order issued by Revenue). Although a tax liability may not exist under the PAYE system, a PRSI liability may still arise. Where a PRSI liability arises in this context, it is included on the employer’s Payroll Submission for that period and paid as part of the Monthly Return.

Employment contributions are calculated on reckonable earnings, whereas people in receipt of reckonable income or reckonable emoluments will be liable to pay self-employed contributions (PRSI Class S), which will be discussed in more detail later in the chapter.

3. Employed Contributors

Employees aged 16 or over and under 66 are insurable for PRSI purposes and are referred to as employed contributors where they are employed in an insurable employment. Most employments are insurable for PRSI purposes and are set out in Part 1 of Schedule 1 of the **Social Welfare Consolidation Act 2005**. However, certain employments are regarded as excepted employments and are not insurable for PRSI purposes. The excepted employments are set out in Part 2 of Schedule 1 of the **Social Welfare Consolidation Act 2005**.

Section 2 of **Social Welfare Consolidation Act 2005** defines insurable employment as:

“Insurable employment” means employment such that a person, over the age of 16 years and under pensionable age, employed in that employment would be an employed contributor.

² Inserted by Social Welfare Act 2010, Section 13 and amended by the Social Welfare Act 2011, Section 3

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Section 12 of **Social Welfare Consolidation Act 2005** defines an “employed contributor” as:

“(a) subject to paragraph (b), every person who, being over the age of 16 years and under pensionable age, is employed in any of the employments specified in Part 1 of Schedule 1, not being an employment specified in Part 2 of that Schedule, shall be an employed contributor for the purposes of this Act, and

(b) every person, irrespective of age, who is employed in insurable (occupational injuries) employment shall be an employed contributor and references in this Act to an employed contributor shall be read accordingly”.

4. Insurable Employments

The categories of insurable employment, listed in Part 1 of Schedule 1 of the **Social Welfare Consolidation Act 2005**, are as follows:

1. *Employment in the State under a contract of service or apprenticeship, written or oral, whether expressed or implied, and whether the employed person is paid by the employer or some other person, and whether under one or more employers and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise or without any money payment.*

This applies to a typical employee. Under this heading, the employment has to be exercised in the State.

2. *Employment under such a contract referred to in paragraph 1—*

(a) as master or a member of the crew of—

(i) any ship registered in the State, or

(ii) any other ship or vessel of which the owner or, where there is more than one owner, the managing owner or manager, resides or has his or her principal place of business in the State, or

(b) as captain or a member of the crew of—

(i) any aircraft registered in the State, or

(ii) any other aircraft of which the owner or, where there is more than one owner, the managing owner or manager, resides or has his or her principal place of business in the State.

This would apply to a member of the crew of an aircraft or ship registered in Ireland.

3. *Employment in the civil service of the Government or the civil service of the State and employment such that the service of the employed person is, or is capable of being, deemed under section 24 of the Superannuation Act 1936 to be service in the civil service of the Government or the civil service of the State.*

4. *Employment as a member of the Defence Forces.*

5. *Employment under any local or other public authority.*

6. *Employment as a court messenger under section 4 of the Enforcement of Court Orders Act 1926.*

7. (a) Employment as a trainee midwife, student midwife, pupil midwife, probationary midwife, trainee nurse, student nurse, pupil nurse or probationary nurse.
(b) In this paragraph “nurse” includes a nursery or children’s nurse.
8. Employment by the Minister as manager of an employment office.
9. Employment as a member of the Garda Síochána.
10. Employment where the employed person is a person in Holy Orders or other minister of religion or a person living in a religious community as a member of that community.
11. Employment by An Post as a sub-postmaster remunerated by scale payment.
12. Employment under a scheme provided by the Minister and known as Community Employment or employment under a programme known as the Part-Time Job Opportunities Programme administered by or on behalf of the Conference of Religious of Ireland, where-
 - (a) that employment begins on or after 6 April 1996, or
 - (b) in any other case, where, subject to the conditions and in the circumstances that may be prescribed, the person employed in either of those employments, elects to be an employed contributor within the meaning of section 12 (1)(a).
13. Employment whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971 and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract and whether or not the third person pays the wages or salary of the individual in respect of the work or service).

The above list of insurable employments is relatively self-explanatory. Insurable employment means employment in the State under a contract of service or apprenticeship, employment in the civil or public service, Garda Síochána, Defence Forces, Local Authorities, etc. including where a person is engaged by an Employment Agency.

5. Excepted Employments

Section 12 of the Act also provides that certain employments are not insurable employments for PRSI purposes, and are referred to as excepted employments (i.e. employment contributions are not payable in respect of these employments). However, the Minister for Social Protection may make Regulations to bring any of the excepted employments back within the definition of an insurable employment. The excepted employments as set out in Part 2 of Schedule 1 are as follows:

1. Employment in the service of the spouse or civil partner of the employed person.

This is covered in more detail under Family Employments below.

2. Employment of a casual nature otherwise than for the purposes of the employer's trade or business, and otherwise than for the purposes of any game or recreation where the persons employed are engaged or paid through a club.

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3. *Employment by a prescribed relative of the employed person, being either employment in the common home of the employer and the employed person or employment specified by regulations as corresponding to employment in the common home of the employer and the employed person.*

The consolidated regulations of 1996 extended the above definition to include a farm.

A ‘**prescribed relative**’ for this purpose is defined as a parent, grandparent, stepparent, son, daughter, grandchild, stepchild, brother, sister, half-brother, or half-sister.

If an individual is employed as an employee by a prescribed relative and the employment relates to a private dwelling house or a farm in or on which both the individual and the employer reside, this is not an insurable employment. Where an individual assists or participates in the running of the family business but not as an employee (e.g. a son/daughter who is attending full-time education who participates in the family business after school hours), this will not be regarded as an insurable employment.

4. *Employment specified in regulations as being of such a nature that it is ordinarily adopted as subsidiary employment only and not as the principal means of livelihood.*

The consolidated regulations of 1996 specify certain employments as being subsidiary employments (i.e. they are not regarded as the main source of income of certain individuals). Subsidiary employments are covered in more detail below.

5. *Employment specified in regulations as being of inconsiderable extent.*

The consolidated regulations of 1996 specify certain employments as being of inconsiderable extent. Employment of inconsiderable extent is determined by the level of an employee’s earnings. Where the earnings are below €38 per week from all employments of the employee, the employment(s) will be regarded as being of inconsiderable extent. Such employment is not insurable for social insurance purposes but is insurable for occupational injuries only. As such PRSI Class J applies. Employment of inconsiderable extent does not apply where an employee is placed on short time work, and his earnings drop below €38 per week. Where an employee is placed on short-time work, PRSI class A would still apply even where the earnings fall below €38 per week.

6. *[This point is now obsolete.]*

7. *Employment in the State in a company under a written or an oral contract of service, whether expressed or implied, where the employed person is –*

- (a) *the beneficial owner of that company, or*
 - (b) *able to control 50 per cent or more of the ordinary share capital of that company, either directly or through the medium of other companies or by any indirect means.*

This is covered in more detail in the chapter entitled “Company Directors”. However, this exception provides that a person who directly or indirectly owns or is able to control 50% or more of the share capital of a company cannot be insured as an employee of that company as it is regarded as an excepted employment.

6. Employment Contributions

Employment contributions is the term used to refer to the combined employee and employer PRSI contributions payable in respect of reckonable earnings paid by the employer. Section 13 of the Act, as amended, is the main section governing the contributions payable under PRSI Class A.

Section 13(1) of the Act provides that:

“Employment contributions shall be paid by employed contributors and their employers in accordance with this section”.

Section 13(2)(a), provides that no employee PRSI liability will arise in any contribution week where an employee receives a payment of no more than €352, or the equivalent threshold for other pay frequencies.

Section 13(2)(b), as amended,³ provides that where an employee’s reckonable earnings exceed €352 but don’t exceed €424, an employee contribution shall be payable at 4% reduced by the amount of the PRSI credit. The weekly PRSI credit is calculated as €12 less one-sixth of the difference in the reckonable earnings and €352.01. The equivalent of these figures is used in respect of an employee who is paid on another pay frequency.

Section 13(2)(d), states that the rate of employer PRSI is 7.8% where the employee’s reckonable earnings for employer PRSI purposes do not exceed €441 per week, or 10.05% where the reckonable earnings exceed €441 per week. This threshold is generally increased each year in line with any increase in the national minimum wage.

These rates might appear incorrect as it is generally accepted that employer’s PRSI is either 8.8% or 11.05% under PRSI Class A for the current tax year. It is not commonly known, but employer PRSI comprises a National Training Fund Levy as per Section 4 of the **National Training Fund Act 2000**. The rate was originally set at 0.7% which remained in place until the end of 2017. The rate was increased to 0.8% in 2018, 0.9% in 2019 and 1% since 1st January 2020. The same rules that apply to employer PRSI also apply to the Training Levy and in practice the combined rates of 8.8% (7.8% + 1%) and 11.05% (10.05% + 1%) are referred to as employer’s PRSI.

Section 13(2)(da), as amended,⁴ provides that the following deductions can be made from an employee’s reckonable earnings before calculating the employer PRSI contribution:

- ASC payable by public servants, and
- Share based remuneration.

Where the weekly reckonable earnings exceed €424, or the equivalent amount for an employee who is paid otherwise than on a weekly basis, Section 13(2)(db) provides that an employee contribution of 4% is payable on the total weekly earnings.

This section also states that an employer is liable in the first instance to pay the employee contribution, but is entitled to deduct it from the employee’s wages. The Regulations provide that the employer shall deduct the employee contribution from the employee’s earnings. However, the employer is not permitted to deduct the employer contribution from the employee’s earnings.

³ Amended by Social Welfare and Pensions Act 2015

⁴ Amended by Social Welfare Act 2011 and Social Welfare, Pensions and Civil Registration Act 2018

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Section 13(8) provides that:

"In the case of employment specified in paragraph 12 of Part 1 of Schedule 1, subsection (2)(d) shall be read as if "0.5 per cent" were substituted for "7.8 per cent" and "10.05 per cent".

This means that employment in a community employment scheme is an insurable employment as it is listed in Part 1 of Schedule 1, however based on subsection 8, the rate of the employer's PRSI contribution is 0.5%. Subclasses A8 and A9 cater for these payments. The employee PRSI contribution as previously outlined is a contribution of 4% reduced by the amount of the PRSI Credit as appropriate, where the reckonable earnings exceed €352 per week. The National Training Fund Levy does not apply to these payments.

Section 13(9) provides for an employer PRSI exemption scheme. This scheme is now obsolete and has been replaced by the JobsPlus Initiative.

Section 13 finishes up by saying that where an employer makes a PAYE settlement with Revenue (Section 985B of the **Taxes Consolidation Act 1997** permits an employer to make a PAYE settlement with Revenue for minor and irregular benefits provided to employees), employer PRSI is payable at 14.05% of the aggregate amount of the reckonable earnings and income tax due. The employer is not permitted to recover any part of this contribution from an employee. In addition, the National Training Fund Levy of **0.7%** is also payable on the aggregate reckonable earnings and income tax due. This results in a total PRSI liability of 14.75%.

Note: While the rate of the National Training Fund Levy was updated to 1% in Section 4(1) of the **National Training Fund Act 2000** (i.e. 1% applies to reckonable earnings paid to an employee), the rate was not updated in Section 4(14) of the **National Training Fund Act 2000**, hence the rate of 0.7% continues to apply in a PAYE Settlement Agreement.

By default, all employees are liable to PRSI in accordance with the above rates and thresholds (i.e. PRSI Class A). Section 14 of the Act provides that the above rules may be modified for certain classes of contributor.

7. Modified Insurance

Section 14 of the **Social Welfare Consolidation Act 2005** provides that certain categories of employment are insurable at modified rates which are lower than the rates outlined in Section 13 (rates payable under PRSI Class A). These modified categories of employment generally apply to civil or public servants employed in permanent and pensionable employments which commenced prior to 6th April 1995. Modified rates generally apply to both the employee contribution and the employer contribution. The National Training Fund Levy is not payable under the modified rates.

Note: New entrants to the public or civil service since 6th April 1995 are insurable at PRSI Class A.

Section 14 provides that regulations may modify the PRSI contributions payable by certain categories of employees, as follows:

- (1) *Regulations may modify this Part in its application in the case of –*
(a) *persons employed in any of the employments specified in paragraphs 2, 3, 4, 5, 9 and 10 of Part 1 of Schedule 1, or*

The categories of employment listed in paragraph (a) above are as follows:

2. Master or member of the crew of any ship or aircraft registered in the State
3. Employment in the Civil Service
4. Employment as a member of the Defence Forces
5. Employment in a Local or Public Authority
9. Employment as a member of An Garda Síochána
10. Employment in Holy Orders or a Minister of Religion

- (b) *in the cases that may be prescribed, persons employed in Eircom plc, or*

Paragraph (b) above has been updated by Regulations. Due to the change from Bord Telecom Éireann to Eircom Plc, subsequently to Eircell 2000 Plc and subsequently to Vodafone Group Services Ireland Limited, employees originally employed prior to 6th April 1995 who were insurable at the modified rates continue to be so insurable in their employment with Vodafone.

- (c) *in such cases as may be prescribed, persons who, on 5th April 1995 were employed in an employment to which paragraph (a) or (b) applies and which is prescribed, and who cease to be so employed, but immediately on such cessation become employed in another employment which is prescribed, under terms and conditions which provide that the person continues to be employed in a permanent and pensionable capacity and for payment during illness on a basis considered adequate by the Minister, or*

Section 14(1)(c) provides that where a person leaves or is redeployed from any of the employments specified above and was insurable at a modified rate in that employment, and immediately takes up another prescribed employment, such a person will continue to be insurable under the appropriate modified rate as applies in that new employment, assuming the new employment is permanent, pensionable and provides for sick pay.

Regulations provide for the continuation of the existing modified rate of PRSI (Class D) for any Class D contributor who transfers to Premier Lotteries Ireland Ltd following the transfer of the National Lottery licence from An Post to Premier Lotteries Ireland Ltd.⁵

- (d) *persons employed in a statutory transport undertaking, or*
- (e) *persons employed as teachers in primary schools which are recognised schools within the meaning of the Education Act 1998, or*
- (f) *persons employed as teachers in training colleges recognised by the Minister for Education and Science for teachers in primary schools, or*
- (g) *persons employed as teachers in post-primary schools which are recognised schools within the meaning of the Education Act 1998, or*
- (h) *persons employed as teachers in domestic science training colleges funded by moneys voted by the Oireachtas for that purpose, or*
- (i) *persons employed as members of the Army Nursing Service, or*

⁵ Social Welfare (Consolidated Contributions and Insurability)(Amendment) (No. 5)(Modifications of Social Insurance) Regulations 2014

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- (j) persons employed in voluntary hospitals to which grants are paid from moneys provided by the Oireachtas in recoupment of revenue deficits, or
- (k) persons employed by voluntary organisations which are providing district nursing services, or
- (l) persons employed in an employment which is an insurable (occupational injuries) employment under section 71.

7.1 Social Welfare Consolidated Regulations

The **Social Welfare (Consolidated Contributions and Insurability) Regulations 1996 to 2018** outlines the different rates of PRSI payable by people who pay “modified rates” of PRSI. These are categorised by the Department of Social Protection (DSP) as PRSI classes B, C, D, E, H and J.

Article 81 applies to permanent and pensionable civil servants, members of the Garda Síochána (including members who were trainees on the 5th April 1995 and immediately on qualification became a member of An Garda Síochána), registered dentists and doctors employed in the civil service recruited prior to 6th April 1995, and states that the employment contributions payable by both the employee and the employer are as follows:

“a contribution by the employed contributor at the rate of -

- (i) 0.9 per cent of the amount of reckonable earnings up to €1,443, and
- (ii) 4 per cent of the amount of reckonable earnings in excess of €1,443,

in that week in respect of each employment (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis)”

and “a contribution by his employer at the rate of 2.01 per cent”.

This category of contributors is insurable under PRSI Class B.

Article 82 applies to commissioned army officers and members of the army nursing service and states that the employment contributions payable by both the employee and the employer are as follows:

“a contribution by the employed contributor at the rate of -

- (i) 0.9 per cent of the amount of reckonable earnings up to €1,443, and
- (ii) 4 per cent of the amount of reckonable earnings in excess of €1,443,

in that week in respect of each employment (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis)”

and “a contribution by his employer at the rate of 1.85 per cent”.

This category of contributors is insurable under PRSI Class C.

Article 83 applies to any permanent and pensionable employees employed in the public service who were recruited prior to 6th April 1995, who are not covered under Classes B or C. Some of the categories mentioned in this article include teachers, employees of Córas Iompair Éireann

(CIE), and employees of public or local authorities. Article 83 states that the employment contributions payable by both the employee and the employer are as follows:

“a contribution by the employed contributor at the rate of -

- (i) 0.9 per cent of the amount of reckonable earnings up to €1,443, and*
- (ii) 4 per cent of the amount of reckonable earnings in excess of €1,443,*

in that week in respect of each employment (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis)”

and “a contribution by his employer at the rate of 2.35 per cent”.

This category of contributors is insurable under PRSI Class D.

Article 83A⁶ applies to any permanent and pensionable employees employed by An Post on 5th April 1995, who continue to be so employed in a permanent and pensionable capacity by An Post immediately before the transfer of the National Lottery Licence to Premier Lotteries Ireland Ltd, and who continue to be employed in a permanent and pensionable capacity with Premier Lotteries Ireland Ltd. Article 83A states that the employment contributions payable by both the employee and the employer are as follows:

“a contribution by the employed contributor at the rate of -

- (i) 0.9 per cent of the amount of reckonable earnings up to €1,443, and*
- (ii) 4 per cent of the amount of reckonable earnings in excess of €1,443,*

in that week in respect of each employment (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis)”

and “a contribution by his employer at the rate of 2.35 per cent”.

This category of contributors continues to be insurable under PRSI Class D with Premier Lotteries Ireland Ltd.

Article 84 provides that any person who is insured for PRSI purposes under modified PRSI rates B, C, and D, who cease that employment and are immediately employed in any of the other prescribed modified insurance categories, will continue to be insurable at the modified rate that applies to that new employment (Section 14(1)(c) of the Act refers).

Article 86 applies to persons employed as ministers of religion employed by the Church of Ireland Representative body and states that the employment contributions payable by both the employee and the employer are as follows:

- (a) the employment contribution payable under section 13(1) of the Act of 2005 shall comprise contributions at the following rates:*
- (i) where in any contribution week a payment of more than €352 and not exceeding €412 is made to or for the benefit of an employed contributor in respect of reckonable earnings of that employed contributor, a contribution by the employed contributor at the rate of 3.33 per cent of the amount of the reckonable earnings in that week in respect of each*

⁶ Inserted by Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No. 5) (Modifications of Social Insurance) Regulations 2014

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employment, reduced by the equivalent of the difference between €10, and one-sixth of the difference between the reckonable earnings of that contributor and €352.01, (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis)

- (ii) *where in any contribution week a payment of more than €412 is made to or for the benefit of an employed contributor in respect of reckonable earnings of that employed contributor, a contribution by the employed contributor at the rate of 3.33 per cent of the amount of the reckonable earnings in that week of each employment (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis), and*
- (iii) *a contribution by his employer at the rate of 6.87 per cent.⁷*

This category of contributors is insurable under PRSI Class E.

Article 87 applies to non-commissioned officers and enlisted personnel of the Defence Forces (other than commissioned army officers and member of the army nursing service who are insurable under Class C) and states that the employment contributions payable by both the employee and the employer are as follows:

- (a) *the employment contribution payable under section 13(1) of the Act of 2005 shall comprise contributions at the following rates:*
- (i) *where in any contribution week a payment of more than €352 and not exceeding €424 is made to or for the benefit of an employed contributor in respect of reckonable earnings of that employed contributor, a contribution by the employed contributor at the rate of 3.9 per cent of the amount of the reckonable earnings in that week in respect of each employment, reduced by the equivalent of the difference between €12, and one-sixth of the difference between the reckonable earnings of that contributor and €352.01, (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis)*
- (ii) *where in any contribution week a payment of more than €424 is made to or for the benefit of an employed contributor in respect of reckonable earnings of that employed contributor, a contribution by the employed contributor at the rate of 3.9 per cent of the amount of the reckonable earnings in that week of each employment (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis), and*
- (iii) *a contribution by his employer at the rate of 9.35 per cent.⁸*

This category of contributors is insurable under PRSI Class H.

Unlike the other modified rates which primarily apply to people recruited prior to 6th April 1995, this modified rate continues to apply to new employees insurable under PRSI Class H.

Article 88 applies to people employed in insurable occupational injuries employment only. These employees are insured against any accident which may happen in the workplace (Occupational Injury Benefit) but are not insurable for any other benefit or pension payable by the DSP. Article 88 states that the employment contributions payable by both the employee and the employer are as follows:

⁷ Amended by Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No. 2) (Modifications of Insurance) Regulations 2015

⁸ Amended by Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No. 2) (Modifications of Insurance) Regulations 2015

the employee contribution “shall not be payable in the case of the employed contributor,” and “the employment contribution payable by the employer ... shall comprise a contribution at the rate of 0.5 per cent of reckonable earnings”.

The following categories of employment are insurable for Occupational Injury Benefit under PRSI Class J:

- (i) *an employment specified in Part I of the First Schedule to the Principal Act, where the employee has attained pensionable age,*

This article states that an individual who has reached pension age (currently 66 years of age), employed in any of the insurable employments listed in Part 1 of Schedule 1 of the **Social Welfare Consolidation Act 2005** is insurable for occupational injuries only.

- (ii) *an employment referred to in article 89 and Schedule C as being of such a nature that it is ordinarily adopted as subsidiary employment only and not as the principal means of livelihood,*

As stated in **Article 89**, each of the employments specified in Schedule C of the **Social Welfare (Consolidated Contributions and Insurability) Regulations 1996** are deemed to be of such a nature that it is adopted as a subsidiary employment and not considered to be the individual's principal source of income. The categories of subsidiary employments stated in Schedule C are covered in detail below.

- (iii) *an employment specified in article 90 as being of inconsiderable extent,*

Article 90 states that employment in any contribution week in **one or more** employments, which would normally be insurable for PRSI purposes under Class A, shall be regarded as an employment of inconsiderable extent where the total reckonable earnings payable in that week from all employments does not exceed €38, resulting in a contribution payable under PRSI class J. Most payroll software will automatically process a PRSI Class J contribution as a subclass of Class A where the earnings do not exceed €38 per week.

This does not apply where an employee's earnings fall below €38 per week due to an employee being on systematic short-time employment, in which case the employee would continue to be insurable under PRSI Class A. Systematic short-time shall be deemed to occur in a business where employees had, prior to its introduction, been engaged in full-time employment and where, subsequent to the introduction of systematic short-time employment, the employees are working a lesser number of hours in the working week than was normal, and where there is an expectation that the employer will resume normal full-time work within a reasonable period.

An employment shall be regarded as an employment of inconsiderable extent where the total earnings of all employments for that week do not exceed €38 per week. As per **Article 95** of the Regulations, where an employee has more than one employment in that week, the employee should inform the employer (the employer making the payment of less than €38) of their other earnings to determine if this will be regarded as an employment of inconsiderable extent insurable under Class J. This seldom, if ever, happens in practice. Where the total earnings for the week exceed €38, all employments are insurable under PRSI Class A. In practice, many employees will earn in excess of €38 per week hence this issue may not arise too often.

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8. Subsidiary Employments

Schedule C of Social Welfare (Consolidated Contributions and Insurability) Regulations 1996 defines a subsidiary employment (which is insurable under PRSI Class J) as follows:

- 1. Any employment adopted by a person who is ordinarily and mainly dependent for his livelihood on another employment which is –*
 - (a) an excepted employment by virtue of paragraph 1 or paragraph 3 of Part II of the First Schedule to the Principal Act, or*
 - (b) an employment mentioned in article 81(1), 82(1), 83(1) or 87(1) where the person is liable to pay employment contributions at the rate specified in article 81(2), 82(2), 83(2) or 87(2), as the case may be.*

Paragraph 1(a) provides that a **secondary** employment of a person who is also employed by their spouse or civil partner, or employed by a prescribed relative in the home or farm of that prescribed relative in which both the employer and employee reside is regarded as a subsidiary employment insurable at PRSI Class J, where the employment with the spouse, civil partner or prescribed relative (these are not insurable employments) is regarded as his principal means of livelihood.

Paragraph 1(b) provides that where a civil or public servant, who is insurable at a modified rate (Classes B, C, D and H) in their main employment, takes up an additional employment, such additional employment shall be regarded as a subsidiary employment and insurable under PRSI Class J.

This does not apply to civil or public servants who are insurable under PRSI Class A in their main employment, as a subsidiary employment held by this individual may also be insurable under Class A, unless specifically listed in paragraphs 2 – 4 below.

- 2. Employment as attendant at or in connection with examinations held by the Department of Education.*

This includes superintendents, invigilators, supervisors, correctors, etc. engaged by the State Examinations Commission who assist with the State exams (i.e. Junior Certificate and Leaving Certificate). Class J applies to such payments, regardless of the PRSI Class paid by the individual in his main employment.

- 3. Employment involving occasional service only, as presiding officer or as poll clerk at Presidential elections, elections to the European Parliament, general elections, bye-elections, local elections or at referenda.*

Class J applies to such payments, regardless of the PRSI class paid by the individual in his main employment.

- 4. Employment as a member of the Reserve Defence Forces involving service in either Army Reserve or Naval Service Reserve for any period not in excess of 21 consecutive days.*

Class J applies to such payments, regardless of the PRSI class paid by the individual in his main employment.

9. Self-Employed Contributors and Self-Employed Contributions

Section 20 of the **Social Welfare Consolidation Act 2005** defines a Self-Employed Contributor as a person “over the age of 16 years and under pensionable age (not being an excepted self-employed contributor by virtue of Part 3 of Schedule 1), who has reckonable income or reckonable emoluments...”. An individual may be a self-employed contributor regardless of whether that person is also an employed contributor. The categories of excepted self-employed contributors specified in Part 3 of Schedule 1 are detailed in paragraph 10 below.

“*Reckonable emoluments*” and “*reckonable income*” are defined in section 2 of the Act, as amended,⁹ and read as follows:

‘reckonable emoluments’ in relation to a self-employed contributor or a person to whom Chapter 5B of Part 2 applies, means emoluments (other than reckonable earnings and any other emoluments that may be prescribed) to which Chapter 4 of Part 42 of the Act of 1997 applies and reckonable emoluments shall include -

- (a) *share-based remuneration realised, acquired or appropriated, as the case may be, on or after 1 January 2011, and*
- (b) *the specified amount within the meaning of Section 825C of the Act of 1997;*

This definition of reckonable emoluments applies to income taxable under the PAYE system, but which is not reckonable earnings derived from an insurable employment (e.g. reckonable emoluments include directors’ fees payable to directors including non-executive directors and emoluments paid to elected members of a local authority). It also includes share-based remuneration (with the exception of a qualifying share option granted under the Key Employee Engagement Programme) and the specified amount which qualifies for tax relief under the Special Assignee Relief Programme. Chapter 5B introduced a PRSI liability on reckonable emoluments or reckonable income of a modified contributor. As stated previously, employees who hold an insurable employment are in receipt of reckonable earnings.

‘reckonable income’ in relation to a self-employed contributor, an optional contributor or, subject to Chapter 5B of Part 2, a person to whom that Chapter applies, means the aggregate income (excluding reckonable earnings, reckonable emoluments and any other income that may be prescribed) from all sources for a contribution year as estimated in accordance with the Income Tax Acts, but without regard to -

- (a) *sections 140, 195, 216C, 216F, 231, 232 and 233 of the Act of 1997, or*
- (b) *save in the case of a person to whom paragraph 1 of Part 3 of Schedule 1 applies, Chapter 1 of Part 44 of the Act of 1997, after deducting from the income so much of any deduction allowed by virtue of the provisions of the definition of capital allowance in section 2(1) of the Act of 1997.*

This definition includes income from a trade, business, profession or vocation; dividends, deposit interest, rental income, etc. but excluding reckonable earnings or reckonable emoluments. Chapter 5B introduced a PRSI liability on reckonable emoluments or reckonable income of a modified contributor.

⁹ Amended by Social Welfare and Pensions Act 2012, Section 8

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This definition also includes certain income such as stallion fees, stud greyhound services fees, including tax exempt income from certain woodlands, income of up to €15,000 for minding up to 3 children in child-minder's home and income which qualifies for Artists Exemption. Other tax exempt income (e.g. up to €14,000 from renting a room in your home, up to €20,000 arising from the production, maintenance or repair of Irish harps and/or uilleann pipes) is exempt from PRSI.

PRSI liabilities are calculated separately for each spouse or civil partner. Capital allowances can be deducted from income before calculating PRSI.

Section 21 of the Act, as amended, provides for the following rates of self-employed contributions:

- Where a self-employed contributor is in receipt of reckonable income or reckonable emoluments, or both, a self-employed contribution is payable at the rate of 4% of that amount or €500, whichever is the greater amount.
- Where the correct self-employed contribution has been paid (i.e. the greater of 4% of the reckonable income or €500), the self-employed contributor shall be regarded as having paid contributions for each contribution week in that contribution year.

Self-employed contributions are payable under PRSI Class S. However a self-employed contribution is not payable where the individual's total income (reckonable income, reckonable emoluments and/or reckonable earnings) does not exceed the prescribed limit of €5,000. This is covered in more detail below.

10. Excepted Self-Employed Contributors

As stated in paragraph 9 above, Section 20 of the Act, as amended, provides that certain categories are regarded as excepted self-employed contributors and consequently a self-employed contribution is not payable where the individual falls into any of the categories of excepted self-employed contributors as set out in Part 3 of Schedule 1 of the Act as follows:

1. *A prescribed relative of a self-employed contributor who—*
 - (a) *participates in the business of the self-employed contributor, and*
 - (b) *performs the same tasks or ancillary tasks to those performed by the self-employed contributor,*

other than a person—

- (i) *who is a partner in the business of the self-employed contributor, or*
 - (ii) *to whom subparagraphs (a) and (b) apply and who is the spouse or civil partner of the self-employed contributor.*

Paragraph 1 was amended to extend the definition of a self-employed contributor to include a spouse or civil partner of a self-employed person where he/she participates in the business, performing the same or ancillary tasks, but not as a business partner or an employee of the business.¹⁰ The normal rules that apply to self-employed contributors apply to this spouse or civil partner.

¹⁰ Social Welfare and Pensions Act 2014, Section 19

The definition of a prescribed relative was amended to exclude a spouse or civil partner of a self-employed contributor.¹¹ A prescribed relative is defined as a parent, grandparent, stepparent, son, daughter, grandchild, stepchild, brother, sister, half-brother or half-sister. A prescribed relative, who participates in the business of a self-employed contributor performing the same or ancillary tasks, but not as a partner in the business, is an excepted self-employed contributor.

2. *[This point is now obsolete.]*
3. *A person, the aggregate of whose total reckonable income, reckonable emoluments or reckonable earnings (if any) before deducting so much of any deduction –*
 - (a) allowed by virtue of the provisions referred to in the definition of “capital allowances” in section 2(1) of the Act of 1997 to be deducted or set off against income in charging it to income tax, or*
 - (b) allowed in accordance with Regulations 41 and 42 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) to be deducted on payment of emoluments or earnings,*

is below a prescribed amount.

Note: The reference to Regulations 41 and 42 of the **Income Tax (Employments) (Consolidated) Regulations 2001** (S.I. No. 559 of 2001) in paragraph (b) above should be updated to reference Regulation 31 of the **Income Tax (Employments) Regulations 2018** (S.I. No. 345 of 2018) however this update does not appear to have taken place.

The prescribed amount is currently €5,000. Where an individual's total income (reckonable earnings, reckonable emoluments and/or reckonable income) before deduction of capital allowances or contributions to a pension scheme, PRSA, Permanent Health Benefit scheme or ASC payable by public servants, does not exceed €5,000, he is regarded as an excepted self-employed contributor and a self-employed contribution is not payable. He is not compulsory insured, however he may choose to make a voluntary contribution assuming he satisfies the qualifying conditions. Voluntary contributions are covered in detail in section 18 below.

4. *An employed contributor or a person who is in receipt of a pension arising from a previous employment of his or hers or of his or her spouse, in the case of either of whom the income for the contribution year does not include reckonable emoluments or in the case of reckonable income, income to which Chapter 3 of Part 4, or Part 43 of the Act of 1997 applies.*

Where an employee or a person in receipt of an occupational pension has no reckonable emoluments or reckonable income from a trade, profession or partnership, this person is an excepted self-employed contributor and does not incur a self-employed PRSI Class S contribution in respect of any unearned income (e.g. dividends, deposit interest, rental income, etc.).

Note: Where the employee or pensioner is regarded as a chargeable person by Revenue, any unearned income is liable to PRSI. This is covered in more detail in section 16 below.

5. *A person who is employed in any one or more of the employments specified in Article 81, 82, 83 or 84 of the Regulations of 1996.*

¹¹ Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No. 3) (Excepted Self-Employed Contributors) Regulations 2014, S.I. 347 of 2014

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Modified rate contributors are regarded as excepted self-employed contributors and do not incur a PRSI liability on their reckonable emoluments or reckonable income, if any. However, modified rate contributors in receipt of earned income or emoluments incur a PRSI liability on their reckonable emoluments or reckonable income. This is covered in more detail in section 15 below.

6. *A person who is regarded as not resident or not ordinarily resident in the State in accordance with the Income Tax Acts and whose reckonable income for that year does not include income to which Chapter 3 of Part 4, or Part 43, of the Act of 1997 applies.*

A person who is regarded as neither resident nor ordinary resident in the State for tax purposes and whose reckonable income for that year, if any, does not include income from a trade or profession, is an excepted self-employed contributor.

For example, a non-executive director of an Irish Company who is neither tax resident nor ordinarily tax resident and who is in receipt of a director's fee is not liable to pay PRSI on this fee if he has no reckonable income from a trade or profession for that tax year.

Note: A director's fee is a reckonable emolument as opposed to reckonable income, and the definition above makes no reference as to whether the individual has reckonable emoluments or not.

11. Excepted Emoluments

In general, an individual is liable to pay a self-employed contribution in respect of his reckonable emoluments or reckonable income. However, Article 50A and 50B¹² of the **Social Welfare (Consolidated Contributions and Insurability) Regulations 1996**, specifies that certain sources of income are not regarded as reckonable emoluments or reckonable income for PRSI purposes.

The following payments are excepted emoluments and are not liable to PRSI:

- Any payment received from the HSE in the form of a mobility allowance,
- Any benefit, pension, assistance, allowance, supplement or payment received from the DSP under the **Social Welfare Consolidation Act 2005**,
- Any payments received in respect of attending a training course provided or approved by SOLAS,
- Any payments received in respect of participating in a Community Employment scheme,
- Any payments received by way of a pension,
- Any taxable emoluments received by a person in respect of any of the following offices:
 - Offices belonging to either House of the Oireachtas;
 - Membership of the European Parliament;
 - Offices belonging to any court in the State;
 - Public Offices under the State, other than as a member of a local authority (within the meaning of the **Local Government Act 2001**),
- Any pre-retirement withdrawal from an AVC,
- Taxable lump sum payments received from a pension or PRSA which are taxable under the PAYE system (i.e. this generally relates to the amount of lump sums in excess of €500,000),

¹² Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No.2) (Contributions by Certain Employed Contributors) Regulations 2013, amended by Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No. 2) (Excepted Emoluments) Regulations 2016

- Any payment received from a Revenue approved Permanent Health Insurance scheme,
- Any payment which is made, whether in pursuance of any legal obligation or not, either directly or indirectly in connection with or in consequence of, or otherwise in connection with the termination of the holding of an office or employment.

You can see from the above list that certain payments or sources of reckonable emoluments are regarded as excepted emoluments and do not give rise to a PRSI liability, i.e. they can be recorded under PRSI Class M.

For example, no PRSI liability arises on the payment of a taxable termination payment, payment of a pension to a retired employee, or a payment from a Revenue approved Permanent Health Insurance scheme.

An ex-gratia termination payment is exempt from PRSI. However, an element of confusion exists over the correct PRSI treatment of a payment in lieu of notice (PILON) which is taxable by virtue of a provision for such a payment in an employee's contract of employment. Contractual PILON appears to arise by virtue of a legal obligation in connection with the termination of the employee's employment and therefore appears to be exempt from PRSI as an excepted emolument. When this matter was queried with the DSP, because Revenue considers such a payment as taxable because it was provided for in the contract of employment, the DSP stated that they viewed contractual PILON as a reckonable earning derived from an insurable employment; as opposed to an excepted emolument; and hence fully liable to PRSI. However, this is open to interpretation.

Where PILON is not provided for in the contract of employment, both Revenue and the DSP allow for it to be treated as part of an ex-gratia termination payment and hence will not be liable to PRSI, regardless of whether or not it gives rise to a tax liability.

Since 1st January 2017, taxable emoluments payable to an elected member of a local authority were excluded from the list of excepted emoluments and hence are now reckonable emoluments for PRSI purposes giving rise to a PRSI Class S liability, unless the individual is aged 66 or over or is a modified rate contributor.

11.1 Excepted Income

The following items are excluded from reckonable income and are not liable to PRSI:

- Any income received from a foreign life policy,
- Any gain arising from the disposal of a foreign life policy,
- Any income received from an offshore fund,
- Any gain arising from the disposal of an offshore fund,
- Any chargeable excess arising from a pension scheme (i.e. any amount in excess of the standard fund threshold (currently €2m) or an individual's Personal Fund Threshold, if applicable,
- The early encashment of certain amounts of private pensions by certain individuals in the public sector who had previously been self-employed,
- Taxable lump sum payments received from a pension or PRSA which are liable to 20% withholding tax (i.e. this generally relates to the amount of the lump sum in excess of €200,000 up to €500,000).

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12. PRSI for Public Office Holders

Based on the previous section it appears that holders of a public office (e.g. Government Ministers, TDs, Senators, judges, etc.) are not liable to pay PRSI on the emoluments received in respect of these office holdings. However, elected and constitutional public office holders who hold an office with a public body are liable to pay PRSI on these emoluments.¹³

A ‘public office holder’ is defined as:

- (a) *The President,*
- (b) *The holder of a qualifying office,*
- (c) *A member of either House of the Oireachtas,*
- (d) *A member of the judiciary,*
- (e) *A military judge appointed under Chapter IVC of Part V of the Defence Act 1954 (amended by the Defence (Amendment) Act 2007),*
- (f) *The Attorney General,*
- (g) *The Comptroller and Auditor General,*
- (h) *[]**
- (i) *A member of the European Parliament for a constituency in the State, being a member who is in receipt of the salary specified in section 2(2) of the European Parliament (Irish Constituency Members) Act 2009.*

A ‘public body’ is defined as:

- (a) *A Department of State, and*
- (b) *[]**
- (c) *A body established by any enactment*

*Since 1st January 2017, the definition of a public office holder was amended to exclude an elected member of a local authority and the definition of a public body now excludes a local authority.

A public body that is responsible for, or authorises, the payment of emoluments to a public office holder, which are taxable under the PAYE system shall collect, or cause to be collected, a contribution at the rate of 4% of the total emoluments payable to that public office holder in respect of the holding of a public office. This contribution should be recorded under Class K. Individuals normally cease paying PRSI when they reach 66 years of age, however these public office holders are liable to pay PRSI on their remuneration from their public office beyond 66.

Where in any contribution week a payment of not more than €100 (or the equivalent thereof in respect of a public office holder remunerated otherwise than on a weekly basis) is made to or for the benefit of a public office holder in respect of a public office, a contribution shall not be payable by that public office holder in respect of that remuneration arising from that public office.

Where the total amount of remuneration arising from the holding of a public office does not exceed €5,200 in any contribution year, any contributions in respect of that contribution year shall be repaid to the public office holder.

Note: while the elected and constitutional public office holders are liable to pay PRSI on their emoluments arising from their public office, emoluments paid to Board Members of public authorities, including commercial State Companies, continue to be regarded as excepted

¹³ Social Welfare and Pensions Act 2010, Section 14, amended by Social Welfare Act 2016, Section 10

emoluments (i.e. public offices under the State) and are not liable to PRSI (see section 11 above). These positions are generally created by statute and individuals are appointed to these boards by the appropriate Minister. These payments should be recorded under PRSI Class M.

13. Family Employments

All employees, whether full time or part-time; and self-employed workers with an income of €5,000 or more a year from all sources; who are aged 16 or over, are liable to pay PRSI contributions. In return, they are covered for a range of Social Insurance benefits and pensions.

Exceptions to this general rule apply in the case of certain ‘Family Employments’. This term is used to describe a situation in which a self-employed sole trader/businessperson either employs, or is assisted in the running of the business, by a spouse, civil partner or another family member. If the business does not operate on a sole trader basis (e.g. a Limited Company or a Partnership) it is **not** a ‘Family Employment’. The insurable and non-insurable family employments are outlined as follows.

13.1 Insurable Family Employments

The following categories of ‘Family Employment’ are insurable under the PRSI system in exactly the same way as employments that have no family connection:

- An individual who is employed as an employee by a ‘prescribed relative’ and the employment is **not** related to a private dwelling house, or a farm, in or on which both the employee and the employer reside, or
- An individual who is employed as an apprentice by a ‘prescribed relative’ (even if the apprenticeship employment **does** relate to a private dwelling house, or a farm, in or on which both the employee and the employer resides). There must be a registered contract of apprenticeship involved.

Normal PRSI Classification rules apply (Class A or J) in the above situations depending on the employee’s age and level of income.

Individuals who assist their spouse or civil partner in the running of the family business but **not as an employee**, are considered to be self-employed contributors and PRSI Class S applies.

13.2 Non-Insurable Family Employments

The following categories of ‘Family Employment’ are the exceptions and are non-insurable employments. While they are subject to income tax under the PAYE system, they are not liable to either employer or employee PRSI (i.e. Class M):

- An individual who is employed **as an employee** by his/her spouse or civil partner.
- An individual who is employed as an employee by a ‘prescribed relative’ and the employment relates to a private dwelling house, or a farm, in or on which both the employee and the employer reside.
- An individual (excluding a spouse or civil partner) who assists or participates in the running of the family business, but **not** as an employee. For example, a son/daughter who is attending full-time education who participates in the business (e.g. farm) after school hours – but not as an employee.

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A ‘**prescribed relative**’ for this purpose is defined as a parent, grandparent, stepparent, son, daughter, grandchild, stepchild, brother, sister, half-brother, or half-sister.

“Employed as an employee” means that you are employed in the family business under the same terms and conditions as a worker who is not a relative. You would, for example, be subject to control, direction, and dismissal by the employer, receive a salary and holiday pay and have no control over the running of the business.

13.3 Limited Companies and Partnerships

If the business is either a Limited Company or Partnership it has a separate legal entity. Employment in such a business is **not** a ‘Family Employment’, because the employment relationship is with the Limited Company, or Partnership, rather than the individual family member who owns/runs it.

The rate of PRSI for an individual working for a Limited Company that is owned by a spouse/civil partner or a family member, is determined by the circumstances of his employment:

- If he is employed as an employee, he is employed in an insurable employment (PRSI Class A or Class J applies assuming the individual does not own or control, directly or indirectly, 50% or more of the share capital).
- If he is not an employee, but participates in the running of the company, or if he holds a directorship/shareholding position and has control over its operations, he may be treated as a self-employed contributor and PRSI Class S applies.

The key question is whether or not he is employed as an employee. The factors that are taken into account in deciding this matter are quite complex. They are set out in a “Code of Practice for determining Employment or Self-Employment status of Individuals”.

Individuals who own or control, directly or indirectly, 50% or more of the share capital in a company are considered to be self-employed contributors. They cannot be employees of that company.

Two or more family members who operate a business as a Partnership and share the profits may be insurable as self-employed contributors at PRSI Class S, provided each has a reckonable income of at least €5,000 per year from all sources.

The following points should be noted:

- The Partnership **must** be genuine and supported by appropriate documentary evidence such as the existence of joint business accounts with banks, etc. There should also be evidence that business activities are in joint names including Invoices, Mart, Creamery Accounts, Cash & Carry Accounts, Farm Grant Applications, Herd Numbers, Business Insurance Policies, etc.
- The most important indicator of the existence of a business partnership is the sharing of profits (or losses). Income tax returns of each partner showing his/her share of the profits should be available. In the case of married couples or civil partners making income tax returns under joint or separate assessment, the income of each must be shown.
- The Income tax returns should be correctly made on a current year basis – applications for the backdating of Partnership status are not accepted. PRSI contributions are calculated on the basis of income details contained in Income tax returns.

13.4 Summary

Employed by a spouse/civil partner	Not Insurable - PRSI Class M
Assisting a spouse/civil partner in running the business but not as an employee	Insurable – PRSI Class S
Assisting a ‘prescribed relative’ in running the business	Not Insurable - PRSI Class M
Employed by a ‘prescribed relative’:	
(a) In the family home or farm	Not Insurable - PRSI Class M
(b) Not in the family home	Insurable - Normal PRSI rules apply
(c) As an Apprentice	Insurable - Normal PRSI rules apply

14. PRSI Contributions for Employees who do not work the full year

An employment contribution under PRSI Class A arises where in any contribution week an employee receives a payment of reckonable earnings of at least €38. A contribution week is a 7 day period commencing on the 1st January each year and each 7 day period thereafter. The DSP maintains that PRSI is payable in respect of the PRSI contribution week, in which payment is earned. However, the **Social Welfare Consolidation Act 2005** states that a PRSI contribution is due in the week which the payment is made. Payroll software cannot always identify when pay is earned and as such it calculates the PRSI liability and number of PRSI contribution weeks due by reference to the date of payment and the pay frequency (weekly, fortnightly, monthly, etc.) of the payroll.

When someone is employed on a continuous basis this does not create a problem, as an employee who is employed for a full year will pay 52 PRSI contributions. However, according to the DSP, for certain employees (e.g. job sharers, people who work term-time, etc.) the number of PRSI contributions paid in a year can vary.

If the 1st January falls on a Saturday, then an employee who works one week on (e.g. Monday to Friday) followed by one week off, will only work 26 contribution weeks in the year and according to the DSP should only be allocated with 26 PRSI contribution weeks for that year, regardless of the employees pay frequency. However, if the employee’s week commences on another day, say a Tuesday, and he works week on - week off, from Tuesday to Saturday, followed by Tuesday to Saturday off, the DSP permit 52 weeks to be granted in this instance as the employee worked in each insurable week of the year (assuming the employee works for the full tax year). The difference here is that Tuesday to Friday falls in one PRSI contribution week and Saturday falls into a second PRSI contribution week.

The DSP apply the same principle to other employees, particularly those in the Public Service who avail of term time (i.e. they take up to 3 months unpaid leave during the school holiday term in the summer). In some organisations these employees are paid their full monthly salary for 9 months of the year and receive 39 PRSI contributions.

In other organisations, the employer spreads the employee’s pay for the 9 months over 12 months and makes 12 reduced monthly payments. In such cases, because they have only worked for 9 months (39 weeks), the DSP state that they are only entitled to 39 contribution weeks, even though they may have received 52 weekly, 26 fortnightly or 12 monthly payments.

The basis for the view put forward by the DSP is that the liability to pay PRSI arises when employees are paid, but PRSI contributions weeks are due in respect of the PRSI contribution

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week in which pay is earned, rather than the period in which it is paid. The DSP refer to the consolidated regulations of 1996 which requires an employer to keep a record of the number of contribution weeks in which the employee was in insurable employment. The following is an analysis of the legislation.

Sections 13(2)(b) and 13(2)(db) of the **Social Welfare Consolidation Act 2005**, as amended, states:

(b) Subject to regulations under section 14, where in any contribution week a payment of more than €352 and not exceeding €424 is made to or for the benefit of an employed contributor in respect of reckonable earnings of that employed contributor -

- (i) A contribution shall be payable by the employed contributor, and*
- (ii) the rate at which that contribution shall be payable shall be the rate of 4 per cent of the amount of reckonable earnings in that week of each employment reduced by the equivalent of the difference between €12 and one-sixth of the difference between the reckonable earnings of that contributor and €352.01 (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis).*

(db) Subject to regulations under section 14, where in any contribution week a payment of more than €424 is made to or for the benefit of an employed contributor in respect of reckonable earnings of that employed contributor -

- (i) a contribution shall be payable by the employed contributor, and*
- (ii) the rate at which that contribution shall be payable shall be the rate of 4 per cent of the amount of the reckonable earnings in that week of each employment (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis).*

(Note: the bold italics in the above paragraph were added by the author for emphasis)

What is noticeable is that the legislation states “where in any contribution week a payment.... is made to ... an employed contributor.... A contribution shall be payable by the employed contributor...” and makes no reference whatsoever to when the payment is earned. This clearly states that a PRSI contribution is payable in a contribution week in which a payment is made, regardless of when it is earned.

Regulation 17 of the consolidated Regulations of 1996, requires an employer to record the following particulars in respect of each contributor to whom the payment of earnings or emoluments has been made in the contribution year:

- the amount of each such payment of earnings or emoluments,
- the contribution payable by the contributor in respect of each payment of earnings or emoluments,
- the total contributions which the employer is liable to remit in respect of each payment of earnings or emoluments,
- the dates of commencement and cessation of insurable employment or insurable self-employment occurring within the contribution year,
- each contribution week of insurable employment or insurable self-employment,
- in the case of an employee, particulars relating to -

- (i) the rate of contribution applicable to the employee at the commencement of the contribution year, or at the date of commencement of the employment (if later), and
- (ii) where any change in his rate of contribution occurred during the year, the date on which such change occurred, the rate of contribution applicable to the employee at the end of the contribution year or at the date of cessation of employment (if earlier) and the number of contribution weeks during the year in which the employee was in insurable employment to which that rate of contribution refers.

As we saw earlier in this chapter, the definition of **insurable employment** means:

employment such that a person, over the age of 16 years and under pensionable age, employed in that employment would be an employed contributor

and the definition of an **employed contributor** means:

every person who, being over the age of 16 years and under pensionable age, is employed in any of the employments specified in Part 1 of Schedule 1, not being an employment specified in Part 2 of that Schedule

and with regard to employments specified in Part 1 of Schedule 1, paragraph 1 states:

Employment in the State under a contract of service or apprenticeship, written or oral, whether expressed or implied, and whether the employed person is paid by the employer or some other person, and whether under one or more employers and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise or without any money payment.

A typical employee will satisfy the test of being in insurable employment, unless it is an excepted employment. When an employee is job-sharing or availing of term-time, they are still in continuous employment. They do not cease to be employed on the commencement of term-time and then subsequently take up a new employment when the term-time ends.

Hence, in the authors' opinion, it would appear that the number of insurable weeks should be based on the period of employment with that employer, regardless of whether the employee was physically present in work on a particular week or not, or based on when payments are made to an employee, regardless of when the money is earned.

Incidentally, the DSP permit insurable weeks to be granted in respect of sick pay, holiday pay (including holiday pay paid to an employee on cessation of employment) or special paid leave granted by the employer. These are payments made to employees when they are not physically in work.

14.1 Monthly Paid Contributions

When an employee is paid monthly, the DSP accept that the payment refers to the month, i.e. 4 or 5 PRSI contribution weeks, and not just the week in which the payment is made. Because there are 52 weeks in a normal year and 12 monthly payments, one in every four monthly payments is equivalent to 5 weekly PRSI contributions. So an employee who is paid monthly will have 52 PRSI weekly contributions in a full year.

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15. Modified Rate Contributors with Reckonable Emoluments or Income

A PRSI liability applies to any non-employment income of a modified rate contributor (Classes B, C and D) where such income includes earned reckonable income (trade, profession or partnership) or reckonable emoluments (director's fees, etc.).¹⁴

Any modified rate contributor with either earned reckonable income or reckonable emoluments is liable to pay 4% PRSI on the total amount. The PRSI should be returned under PRSI Class K which does not give rise to any DSP benefits for the individual. Any social insurance entitlements based on PRSI paid on their Civil or Public Service employment will not be affected. The €100 weekly threshold which applies under PRSI Class K should be ignored i.e. the total amount of the income is liable to PRSI at 4%, regardless of whether it is below the weekly threshold of €100, or not.

The PRSI due on the reckonable income should be paid through the self-assessment tax system. The PRSI payable on reckonable emoluments should be deducted at source through the PAYE system.

Modified rate contributors with other unearned income became liable to PRSI on this unearned income if they are deemed to be a chargeable person for tax purposes.

Note: Where a modified rate contributor holds a subsidiary employment, this subsidiary employment is insurable under PRSI Class J. There is no change to this treatment.

Example 1

Robert is a public servant and pays PRSI Class D on his salary. He is also a self-employed painter and decorator and is in receipt of rental income and deposit interest.

The total amount of his non-employment income is subject to 4% PRSI under Class K which should be paid through self-assessment when Robert is filing his tax return.

Example 2

Patrick is a civil servant and pays PRSI Class B on his salary. He has a 60% shareholding in a company from which he receives a salary. He also is in receipt of dividend income.

As he is in receipt of reckonable emoluments (director's salary), his reckonable emoluments are liable to PRSI through payroll and his dividend income is liable to PRSI through self-assessment.

Example 3

Ben is employed as a hospital consultant and is insurable under Class D. He is paid €12,500 per month. His monthly ASC liability is €1,000. In addition, Ben owns a company which provides private medical care and he receives emoluments of €8,000 per month from this company. Calculate the monthly PRSI payable:

- (a) *In respect of his public service income, and*
- (b) *In respect of his director's emoluments.*

¹⁴ Social Welfare and Pensions (Miscellaneous Provisions) Act 2013, Section 6

Solution 3(a) *Public Service Employment*

<i>Employee PRSI:</i>	<i>First €6,253 @ 0.9% =</i>	<i>€56.28</i>
	<i>Balance (€12,500 - €6,253) = €6,247 @ 4% =</i>	<i>€249.88</i>

€306.16

Employer PRSI: $(€12,500 - €1,000) = €11,500 @ 2.35\% =$ **€270.25**

(b) *Director's Emoluments - Class K applies*

<i>Employee PRSI:</i>	<i>€8,000 x 4\% =</i>	<i>€320.00</i>
<i>Employer PRSI:</i>	<i>Not payable under Class K</i>	<i>Nil</i>

16. PRSI on Unearned Income of Employed Contributors

Since 1st January 2014,

- an employed contributor, and/or
- an individual in receipt of a pension arising from a previous employment of that individual or of his or her spouse or civil partner,
- where such employed contributor or person has attained the age of 16 years but has not attained pensionable age (currently age 66 years),
- who is in receipt of 'unearned income'

is liable to pay 4% PRSI on this unearned income provided the person is considered to be a "chargeable person" for income tax purposes.¹⁵

Examples of unearned income include rental income, dividends, deposit interest, etc. Unearned income does not include income from a trade, profession or partnership.

A chargeable person is a person who is within the scope of the self-assessment tax system and required to file a full self-assessment tax return (Form 11). This mainly refers to self-employed people. Employees and those in receipt of an occupational pension are also considered to be chargeable persons if they have non-PAYE income which is assessable for tax purposes, unless:

- The amount of the non-PAYE income assessable for tax purposes, if any, does not exceed €5,000 for the current tax year, **and**
- It has been subject to tax through the PAYE system (i.e. via reduction of SRCOP and tax credits) or has been fully taxed at source (e.g. deposit interest).

If the above conditions are met, the person is not regarded as a chargeable person and no PRSI will arise on his unearned income. Otherwise, an additional 4% PRSI liability will arise on the unearned income.

With regard to the amount of income assessable for tax purposes, it refers to the:

- Gross amount of deposit interest before deduction of deposit interest retention tax (DIRT),
- Gross amount of dividends before deduction of dividend withholding tax (DWT),
- Amount of rental profit after allowable deductions.

¹⁵ Social Welfare and Pensions Act 2013, Section 3

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While this new PRSI charge will not give rise to any social insurance entitlements from the DSP, any social insurance entitlements based on PRSI paid on their employment income will not be affected.

This 4% PRSI liability should be returned through the self-assessment tax system in all cases i.e. in the Form 11.

These changes do not affect people under 16 years of age or those aged 66 years or over as they are not liable to pay PRSI.

It should also be noted that certain categories of employees are automatically deemed to be a chargeable person, such as:

- Employees who own more than 15% of the ordinary share capital of a company,
- Employees who receive share options,
- Employees who avail of certain tax reliefs such as Special Assignee Relief Programme (SARP), Foreign Earnings Deduction (FED),
- Employees in receipt of income from a foreign employment which is exercised abroad.

Example 4

Richard is a PRSI Class A contributor. His only other source of income is deposit interest which is fully taxed at source and will not exceed €5,000 this year.

Richard is not a chargeable person and he will not be liable to pay PRSI on his deposit interest this year.

Example 5

Simon is a PRSI Class D contributor. His other sources of income are deposit interest of €600 and dividends of €4,800.

Simon is a chargeable person as his non-PAYE income exceeds €5,000 and he will be liable to pay 4% PRSI on his deposit interest and dividends through self-assessment.

Example 6

Thomas is a Class A contributor and he has income from a rental property. The gross income is €10,800 per year, and after allowable deductions, the net rental profit is €6,000.

As the net rental profit (unearned income) is in excess of €5,000, Thomas is a chargeable person. He will be liable to pay PRSI of €240 (€6,000 x 4%) through self-assessment.

Example 7

Vincent is a Class B contributor and he has income from a rental property. The gross income is €7,000, and after allowable deductions, the net rental profit is €2,500 for this year. Revenue has reduced Vincent's SRCOP and tax credits to collect the income tax due through the PAYE system. He also has deposit interest of €200 which was subject to DIRT.

As Vincent's total unearned income does not exceed €5,000 and any tax due on the non-PAYE income was deducted at source or coded into his Tax Credit Certificate, he is not a chargeable person and he will not incur a PRSI liability on this unearned income this year.

Example 8

Eugene, age 67, is in receipt of his State Pension and an occupational pension. He has a net rental income of €50,000.

As Eugene is aged 66 years or over, he is exempt from paying PRSI on his total income.

17. PRSI for Employees posted on Temporary Assignments

Where an employee moves abroad and takes up an employment with a foreign employer or if a foreign national moves to Ireland to take up an employment with an Irish employer, he is subject to the social insurance legislation in the country in which he works. However, specific rules apply where an employee is posted abroad by an Irish employer on a temporary assignment, or indeed employees posted to Ireland by a foreign employer. These rules are outlined in the specific chapters dealing with the Taxation of Outbound Assignees and Taxation of Inbound Assignees.

18. Voluntary PRSI Contributions

Voluntary contributions <https://www.gov.ie/en/publication/80e5ab-prsi-pay-related-social-insurance/#voluntary-contributions> are PRSI contributions which an individual can opt to pay if they are between the age of 16 and 66 and are no longer covered by compulsory PRSI by way of insurable employment, self-employment, or credited contributions. An individual may elect to pay a voluntary contribution to provide cover for long-term benefits, for example, State Pension (Contributory). However, short-term benefits such as Illness Benefit, Jobseeker's Benefit or Maternity Benefit **are not** covered.

For example, a self-employed person may elect to make a voluntary contribution if his total income does not exceed €5,000; and a temporary assignee may elect to make a voluntary contribution if he is no longer compulsorily insured in Ireland or another EEA State. Based on EU legislation it is not possible for an individual to pay social insurance in two or more EEA States at the same time. This means that an individual cannot pay voluntary contributions in Ireland at the same time as being in insurable employment, self-employment, receiving credited contributions or paying voluntary contributions in another EEA State.

To become a voluntary PRSI contributor an individual must complete a Form VC1 and:

- Have at least 520 weeks paid PRSI contributions in either employment or self-employment,
- Apply within 60 months after the end of the contribution year during which he last paid PRSI or when he was last awarded a credited contribution (i.e. an individual can apply in 2022 to make a voluntary contribution in respect of 2017), and
- Have at least 520 paid PRSI contributions.

PRSI contributions paid at Class J for Occupational Injuries Benefits only cannot be used to satisfy these conditions. However, it is possible to pay PRSI at Class J and voluntary contributions at the same time.

There are 3 rates of voluntary contributions:

High Rate	6.6% of the individual's reckonable income in the previous tax year for people who last paid PRSI at Classes A, E and H, subject to a minimum annual payment of €500.
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Low Rate	2.6% of the individual's reckonable income in the previous tax year for people who last paid PRSI at Classes B, C and D, subject to a minimum annual payment of €250.
Special Rate	Flat rate of €500 for people who last paid PRSI at Class S.

Reckonable income for the purpose of calculating voluntary contributions includes income derived from any employment, trade, profession, office or vocation.

The social insurance benefits of each voluntary contribution rate are as follows:

High rate voluntary contribution

- State Pension (Contributory)
- Widow's/Widower's/Surviving Civil Partner's Contributory Pension
- Guardian's Payment (Contributory)

Low rate voluntary contribution

- Widow's/Widower's/Surviving Civil Partner's Contributory Pension
- Guardian's Payment (Contributory)

Special rate voluntary contribution

- State Pension (Contributory)
- Widow's/Widower's/Surviving Civil Partner's Contributory Pension
- Guardian's Payment (Contributory)

Where an application to become a voluntary contributor has been accepted by the DSP, the individual can choose the point in time from which they wish to pay voluntary contributions, as follows:

- The individual can elect to pay voluntary contributions from the week immediately after they last paid a compulsory PRSI contribution as an employed or self-employed contributor or received a credited contribution, or
- A person can elect to pay voluntary contributions from the commencement of any subsequent contribution year of their choice, within the last 5 years (e.g. if a person was given the option of paying voluntary contributions going back 5 years, he can opt against paying voluntary contributions for the first 2 years and only pay voluntary contributions in respect of the last 3 years).

Voluntary contributions may be paid in one payment or by instalments as agreed by the Voluntary Contributions Section of the DSP, but the full contribution must be paid within 12 months of the billing date. When the full amount has been paid for the year in question, 52 weeks voluntary contributions will be awarded for that tax year.

If the full amount of a voluntary contribution is not paid within the specified time, any payments previously made will be refunded to the individual and no voluntary contributions will be awarded in respect of that year.

The only other circumstances where a voluntary contribution is refundable is where it subsequently transpires that an individual resumed paying compulsory PRSI having already paid a voluntary contribution. Voluntary contributions will not be refunded where a voluntary

contributor is also in receipt of credited contributions, as both contribution types can occur simultaneously.

It is not always necessary for an individual to pay voluntary contributions when he ceases employment. If he is in receipt of a social welfare payment (e.g. Jobseeker's Benefit), or signing for credits, he may be receiving credited contributions which will also keep his social insurance record up to date.

If an individual is unfit for work because of illness, injury or disability, he may be entitled to credited contributions which are awarded automatically if he is getting Illness Benefit, Invalidity Pension or Occupation Injury Benefit. Individuals who previously worked in the public service and paid PRSI at Class B, C or D and had to give up work because of ill-health, can receive credited contributions by sending in medical certificates once a year, using an application form CR35. Further information is available at: <https://www.gov.ie/en/publication/825829-operational-guidelines-prsi-credited-contributions-for-public-servan/>

19. PRSI Special Collections System

In normal circumstances PRSI is either collected by Revenue through the PAYE system who pay it over to the DSP or, for self-employed individuals, collected by Revenue when an individual files his annual income tax return and paid over to the DSP.

In other circumstances PRSI may be payable by a person or an employer and where it cannot be paid in either of the methods above, it is paid directly to the DSP through the PRSI Special Collections System.¹⁶ The Special Collection system caters for a very specific employee group that fall outside of the normal employee group that have their PRSI collected through the PAYE system. Employers must apply directly to the Special Collections Section and they have to be accepted before they remit any PRSI payments, which must be made on a monthly basis.

Payments may be made through the Special Collections system in the following situations.

- Those whose earnings are paid by an employer's office outside the State which is not obliged to register as an employer with Revenue,
- Individuals who are self-assessed for income tax purposes but classified as employees for PRSI purposes - for example Sub Post Masters, Social Welfare Branch Office Managers, medical professionals employed on a fee basis by the various Health Service Executive areas
- Those who realise a gain on the exercise of an option under a Revenue approved Save As You Earn (SAYE) and are no longer employed by the employer who granted those options at the time those options are exercised.
- Domestic employees employed in the home of their employer on domestic duties only, and who earn less than €40 per week in the domestic employment. An individual who employs a domestic employee (someone who is solely employed on domestic duties in the employer's private dwelling house) is not obliged to operate the PAYE system if he only has one employee and pays him less than €40 per week.
- Church of Ireland Ministers employed by the Representative Church Body are liable to PRSI Class E. For employees, no PRSI is payable under Class E where the weekly earnings do not exceed €352. Where weekly earnings exceed €352, PRSI is payable at 3.33% on all earnings. Employers pay a rate of 6.87% on all earnings regardless of the amount.

¹⁶ Social Welfare (Consolidated Contributions and Insurability) Regulations, 1996, S.I No 312 of 1996

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- Locally hired employees of Embassies. Embassies who directly employ people who are resident in Ireland can choose whether to operate the PAYE system or not. This is covered in detail in the chapter entitled Residence in Ireland for Tax Purposes. If they don't operate the PAYE system, the employee and employer contributions are payable through the Special Collections System.

Those employers who operate the PRSI Special Collections system are required to submit an end of year PRSI Return called a Form SC1. This form is a declaration by the employer which contains the name and PPSN of each employee, period of employment, earnings for PRSI purposes, employer and employee PRSI, total PRSI, PRSI class and the number of insurable weeks. A copy of the SC1 is available at:

<https://assets.gov.ie/74082/b8dea62834fc44e79135fe95c29490dd.xls>

An End of Year Statement (Form SC4) must be issued to each employee in employment at the end of the tax year. The information contained on an SC4 is similar to that which is recorded by the employer on the Form SC1 as outlined above. A copy of the Form SC4 is available at:
<https://www.gov.ie/pdf/74083/?page=null>

If an employee ceases employment during the year, he must be issued with a Cessation of Employment Certificate called a Form SC3 (instead of the SC4 Form). The information contained on an SC3 is similar to that which is recorded by the employer on the Form SC1 as outlined above. The SC3 Form is available at: <https://www.gov.ie/pdf/74084/?page=null>

20. Enforceable Maintenance Payments

Where an employee makes maintenance payments under a legally enforceable maintenance order to his spouse or civil partner and that employee has paid income tax, PRSI and USC on his income, that employee may claim a refund of income tax, PRSI and USC on the amount of the maintenance payments paid. Tax and USC refunds should be claimed from Revenue.

The quickest way for an employee to apply for a PRSI refund is to apply online via www.mywelfare.ie which requires the individual to hold a Public Services Card. If an employee cannot use MyWelfare, he can download and complete a PRSI REF1 Form
<https://www.gov.ie/en/service/5706e5-prsi-refunds/>

PRSI refunds are restricted to the last 4 complete tax years.

The PRSI refund will be calculated by reducing the employee's reckonable earnings by the amount of the maintenance payment. This may result in a PRSI refund of 4% of the amount of legally enforceable maintenance payment.

Section 13 of the Social Welfare Consolidation Act 2005 (as amended)

- (1) Employment contributions shall be paid by employed contributors and their employers in accordance with this section.
- (2)(a) Where in any contribution week a payment of not more than €352 per week (or the equivalent thereof in respect of an employed contributor remunerated otherwise than on a weekly basis) is made to or for the benefit of an employed contributor in respect of reckonable earnings of that contributor relating to an employment, a contribution shall not be payable by that employed contributor in respect of those earnings from that employment.
- (b) Subject to regulations under section 14, where in any contribution week a payment of more than €352 and not exceeding €424 is made to or for the benefit of an employed contributor in respect of reckonable earnings of that employed contributor -
- (i) A contribution shall be payable by the employed contributor, and
 - (ii) the rate at which that contribution shall be payable shall be the rate of 4 per cent of the amount of reckonable earnings in that week of each employment reduced by the equivalent of the difference between €12 and one-sixth of the difference between the reckonable earnings of that contributor and €352.01 (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis).
- (ba) [.....]
- (c) [.....]
- (ca) [.....]
- (d) Subject to paragraph (da), subsection (8) and to regulations under section 14 where in any contribution week a payment is made to or for the benefit of an employed contributor in respect of reckonable earnings of that employed contributor, a contribution shall be payable by the employed contributor's employer —
- (i) at the rate of 7.8 per cent of the amount of reckonable earnings in that week to which that payment relates where those reckonable earnings do not exceed €441 (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis), and
 - (ii) at the rate of 10.05 per cent of the amount of the reckonable earnings in that week to which that payment relates where those reckonable earnings exceed €441 (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis).
- (da) For the purposes of paragraph (d), reckonable earnings shall be reduced by-
- (i) so much of the allowable contribution referred to in subparagraph (e) of Regulation 31(1) of the Income Tax (Employments) Regulations 2018 (S.I. No. 345 of 2018), and
 - (ii) [.....]
 - (iii) the amount of any share based remuneration

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- (db) *Subject to regulations under section 14, where in any contribution week a payment of more than €424 is made to or for the benefit of an employed contributor in respect of reckonable earnings of that employed contributor -*
- (i) *a contribution shall be payable by the employed contributor, and*
 - (ii) *the rate at which that contribution shall be payable shall be the rate of 4 per cent of the amount of the reckonable earnings in that week of each employment (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis).*
- (e) *For the purposes of this Chapter—*
“payment” includes a notional payment;
“notional payment” has the meaning given to it by section 985A (inserted by section 6 of the Finance Act 2003) of the Act of 1997.

CHAPTER 12

Universal Social Charge

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1. Introduction

The Universal Social Charge (USC), which came into effect on 1st January 2011, is a charge payable on gross income. It replaced the Health Levy and Income Levy which were abolished at the end of 2010. USC is calculated on the Cumulative, Week 1 or Emergency Basis, similar to the manner in which Income tax is calculated. Revenue Payroll Notifications (RPNs) include USC rates and Cut-Off Points (COPs) as well as displaying income tax rates, tax credits and the SRCOP. A copy of an RPN is included in the Chapter entitled “The PAYE System”.

No USC liability arises where an individual’s gross income for USC purposes does not exceed €13,000 for the current tax year.¹ In order for this exemption to apply in payroll, it must be stated on the latest RPN issued by Revenue.

Where an employee’s gross income for USC purposes exceeds €13,000, he is liable to pay USC on his total income, including the first €13,000. This is summarised as follows:

Standard Rates		Reduced Rates*	
Annual Income	Rate	Annual Income	Rate
Not exceeding €13,000	Exempt	Not exceeding €13,000	Exempt
If Annual Income exceeds €13,000			
First €12,012	0.5%	First €12,012	0.5%
Next €10,908	2%	Balance	2%
Next €47,124	4.5%		
Balance	8%		

¹ Taxes Consolidation Act 1997, Section 531AM, as amended

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*The reduced rates of USC apply to a medical card holder or a person aged 70 years of age or over, with aggregate income for USC purposes not exceeding €60,000 for the current tax year. If their aggregate annual income for USC purposes exceeds €60,000, they are subject to the standard rates of USC.

The rates of USC which an employer is responsible for collecting from an employee or pensioner are advised to the employer on the RPN issued by Revenue.

Where an employee is entitled to an exemption from paying USC because his total income does not exceed €13,000 for the year, this will be stated on the RPN. Employers must operate USC based on the figures stated on the latest RPN issued by Revenue. Where an employee or pensioner is entitled to a medical card or is 70 years or over, he should be advised to contact Revenue to request that any necessary adjustments be made to his Tax Credit Certificate which will result in a new RPN being issued to his employer.

The USC treatment will generally follow the tax treatment, for example where an employee is taxed under the Cumulative Basis, Week 1 Basis or Emergency Basis he will also be liable to USC under the Cumulative, Week 1 or Emergency Basis respectively. However, there are exceptions to this rule, especially where an employer has been issued with an RPN indicating an exemption from USC, but he may be liable to tax on the Cumulative Basis.

Individuals with non-PAYE income in excess of €100,000 will incur a USC surcharge of 3% on the excess amount. Hence, all individuals with non-PAYE income will be liable to pay 11% USC on the excess amount in the current tax year.²

A special 45% USC rate applies to certain bank bonuses paid to employees by financial institutions that have received financial support from the State.³ The 45% USC rate applies to non-regular salary, wages or benefits and is intended to apply to bonuses paid to employees where the cumulative total of those bonuses exceed €20,000 in a tax year. Normal rates of USC apply where the cumulative amount of any bonus payments does not exceed €20,000 in a tax year. Where the €20,000 threshold is exceeded, the entire amount of the bonus payment is subject to USC at 45%. Regular salary or benefit payments that do not vary in accordance with the performance of the employee or of the business are not affected.

Employers are obliged to record the amount of USC deducted from an employee's wages on his payslip.⁴ There is no obligation to show the cumulative USC deducted on a payslip, however most payroll software will record the cumulative figure also.

2. USC Rates and Cut-Off Points

The following USC Rates and Cut-Off Points (COPs) apply to employment/pension income for the current year where the individual is liable to USC at the standard rates:

Rate of USC	Weekly COP	Fortnightly COP	Monthly COP	Annual COP
USC Rate 1	0.5%	€231	€462	€1,001
USC Rate 2	2%	€440.77	€881.54	€22,920
USC Rate 3	4.5%	€1,347	€2,694	€70,044
USC Rate 4	8%	Balance	Balance	Balance

² Taxes Consolidation Act 1997, Section 531AN

³ Taxes Consolidation Act 1997, Section 531AAD

⁴ Payment of Wages Act 1991, Section 4

The following USC Rates and Cut-Off Points (COPs) apply to employment/pension income for the current year where the individual is liable to USC at the reduced rates:

Rate of USC	Weekly COP	Fortnightly COP	Monthly COP	Annual COP
USC Rate 1	0.5%	€231	€462	€1,001
USC Rate 2	2%	Balance	Balance	Balance

3. Gross Income liable to USC

An employee is liable to pay USC based on his gross pay including the notional value of any Benefit-in-Kind (BIK) which is taxable through payroll and certain forms of share-based remuneration (i.e. share awards, appropriation of shares from an Approved Profit Sharing Scheme (APSS) and any gain arising from a Save As You Earn (SAYE) scheme), but before any deduction of any employee contributions to a company pension scheme, personal pension scheme, Additional Voluntary Contributions (AVCs), Personal Retirement Savings Accounts (PRSAs) or payments into a Permanent Health Insurance (PHI) scheme. For public servants, USC is calculated on their gross pay before deduction of the Additional Superannuation Contribution (ASC).

The following are not liable to USC:

- Tax exempt BIKs (e.g. a benefit or a voucher up to the value of €500 covered by the small benefit exemption)
- Benefits covered by Revenue approved salary sacrifice (e.g. travel passes, a bicycle under the cycle to work scheme and shares purchased through an APSS)
- Legally enforceable maintenance payments to a separated spouse/civil partner (where spouses/civil partners are separately assessed for tax purposes).

It should be noted that neither voluntary maintenance payments (payments made under an informal arrangement whether for a spouse/civil partner or a child) nor legally enforceable maintenance payments which are paid for the benefit of a child qualify for exemption from USC. Strictly speaking, USC relief on maintenance payments should be claimed at the end of the tax year by the individual directly from Revenue. Where an employee wishes to claim USC relief in respect of a legally enforceable maintenance payment during the tax year, he must contact Revenue who will issue a letter to his employer advising the employer of an amount of salary to be disregarded for USC purposes.

Example 1

John, aged 60, earns €10,000 per month. He makes a pension contribution of €2,000 per month. He received a bonus of €5,000 in January. Calculate his USC liability for January.

Solution 1

Salary	€10,000.00
Bonus	<u>€5,000.00</u>
Pay for USC Purposes	<u>€15,000.00</u>

Income up to Rate 1 COP	€1,001.00 @ 0.5% =	€5.00
Excess up to Rate 2 COP	€909.00 @ 2% =	€18.18
Excess up to Rate 3 COP	€3,927.00 @ 4.5% =	€176.71
Balance of pay at Rate 4	€9,163.00 @ 8% =	<u>€733.04</u>
USC liability		€932.93

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Example 2

Pat Kelly has a gross income of €3,000 per month. He pays €100 into his employer's Revenue approved company pension scheme, and he also pays €50 a month towards the purchase of his monthly travel pass, under a salary sacrifice arrangement. Calculate his pay for USC purposes.

Solution 2

Gross Pay	€3,000.00
Less: salary sacrifice	<u>€50.00</u>
Pay for USC purposes	€2,950.00

Example 3

Barry is employed and earns €2,950 per month. His employer has received a letter from Revenue indicating that €425 per month can be paid to the employee without applying USC. Calculate Barry's monthly gross pay for USC purposes and his USC liability.

Solution 3

Gross Salary	€2,950.00
Less amount advised by Revenue	<u>€425.00</u>
Amount liable to USC	€2,525.00
Income up to Rate 1 COP	€1,001.00 @ 0.5% =
Excess up to Rate 2 COP	€909.00 @ 2% =
Balance of pay at Rate 3	€615.00 @ 4.5% =
USC liability	€50.85

Note: Income tax and PRSI will apply to the monthly salary of €2,950.

4. Employee with Multiple Employments

An individual is entitled to the annual USC COPs of €12,012, €22,920 and €70,044 as applicable. In a similar manner to tax, where an individual has multiple employments, Revenue will issue an RPN to each employer. Each employer should operate USC based on the information contained in the latest RPN they receive. Revenue may allocate all USC COPs to one employment and none to the second employment. If the employee wishes to re-allocate his USC COPs between his employments, it can be done online through myAccount or by contacting Revenue.

5. Exemptions

While there is no age related exemption from USC, employees or pensioners aged 70 years or over and medical card holders will pay a maximum rate of 2%, provided their annual income for USC purposes does not exceed €60,000.

All DSP payments and similar type payments made under the Social Welfare Acts and other sources of income covered by certain provisions of the **Taxes Consolidation Act 1997** (as updated) are exempt from USC.⁵ A copy of this information is included at the end of this chapter. The reimbursement of actual expenses incurred by an employee on behalf of his employer, or the payment of travel or subsistence rates in accordance with approved Civil Service limits are not subject to USC.

⁵ Taxes Consolidation Act 1997, Section 531AM

Statutory redundancy payments are exempt from USC and any ex-gratia or termination payments made by an employer which are exempt from income tax, are also exempt from USC. Any element of an ex-gratia payment or a termination payment which is liable to income tax is also liable to USC.

Employer contributions to an approved retirement benefit scheme (occupational pension scheme) or Personal Retirement Savings Account (PRSA) are not treated as a BIK for Income tax purposes and therefore are not subject to USC through payroll.

Employers are only permitted to exempt employees from USC where the latest RPN received from Revenue indicates an exemption from USC. Otherwise, employers are required to deduct USC. The exemption threshold applies per individual and is not transferable between spouses or civil partners.

Where Revenue is satisfied that an employee or pensioner's total annual income will not exceed the USC exemption threshold, the RPN issued to both the employee and his employer will indicate USC exemption status.

In the bulk issue of RPNs at the beginning of the tax year, Revenue may have issued a number of RPNs indicating a USC exemption status based on information they hold. If an employee or pensioner's RPN does not contain a USC exemption, and he believes that his total annual income for USC purposes will not exceed €13,000, he should contact Revenue and request that a new RPN is issued to his employer indicating a USC exemption.

If an employee has received a USC exemption from Revenue and he believes his annual income will exceed €13,000, he should contact Revenue and request the removal of the exemption to avoid a USC underpayment at the end of the tax year. Following the end of a tax year, Revenue will carry out an end of year review of an employee's pay, tax and USC which should result in an automatic refund of any overpayment and identify those with an underpayment. Where an underpayment does arise, Revenue will seek to recover it by making an adjustment to the individual's RPN in the following year.

5.1 Medical Cards

Employees who hold or are named on a medical card (not a GP Visit Card) for any part of a tax year, will only pay USC at the 0.5% and 2% rates on their income, provided their aggregate annual income for USC purposes does not exceed €60,000. A Health Amendment Act Card (issued to those who contracted Hepatitis C) is deemed to be a medical card, however the European Health Insurance Card is not deemed to be a medical card.

When an employee has been issued with a medical card by the Health Service Executive (HSE) he should contact Revenue to request that his USC status be updated. This will result in a new RPN being made available to his employer.

Where a medical card holder was charged 4.5% or 8% USC in a previous pay period in the current tax year, any USC refund due should be automatically made through payroll assuming Revenue have issued an amended cumulative RPN to the employer with a maximum 2% rate of USC.

Revenue will supply the employer with information needed to calculate USC (i.e. USC rates and thresholds) which will take into account whether or not the person holds a medical card. An employee's medical card status will not be stated on the RPN.

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6. Cumulative Basis

USC is operated on the Cumulative Basis where a cumulative RPN (i.e. effective from 1st January) has been received from Revenue.⁶ The Income Tax Calculation Basis (i.e. Cumulative or Week 1) contained in an RPN is also used for USC purposes. Under the Cumulative Basis, employers are obliged to deduct USC from employees' cumulative gross earnings (or pension in relation to pensioners) each time a payment is made, based on the employee's cumulative USC COPs.

In practice, an employee will pay USC on all his income from the first day he commences employment unless the employer has received an RPN indicating an exemption from USC.

USC is charged on the first €231 per week, €462 per fortnight or €1,001 per month at 0.5%. USC at 2% will apply to any excess amount up to a maximum of €440.77 per week, €881.54 per fortnight or €1,910.00 per month (i.e. any amount up to the next €209.77 per week, €419.54 per fortnight and €909.00 per month).

USC at 4.5% will apply to any excess amount up to a maximum of €1,347 per week, €2,694 per fortnight or €5,837 per month (i.e. any amount up to the next €906.23 per week, €1,812.46 per fortnight and €3,927.00 per month).

USC at 8% will apply to any payment in excess of €1,347 per week, €2,694 per fortnight, €5,837 per month.

Where an employee is in receipt of a medical card or is over 70 years of age and has aggregate annual income for USC purposes which does not exceed €60,000, he will only be subject to a maximum 2% rate of USC on any income in excess of €231 per week, €462 per fortnight or €1,001 per month.

Under the Cumulative Basis of USC, the employer will allocate the cumulative USC COPs against the employee's cumulative gross pay in each pay period when calculating the employee's USC liability. This can be best explained by looking at the calculations on a cumulative USC deduction card in the following examples.

⁶ Universal Social Charge Regulations 2018, Regulation 14 – S.I. No. 510/2018

Explanation of Calculations in a Cumulative USC Deduction Card

Annual:	Rate 1 COP: €12,012.00	Rate 2 COP: €22,920.00	Rate 3 COP: €70,044.00	Balance:
Weekly:	Rate 1 COP: €231.00	Rate 2 COP: €440.77	Rate 3 COP: €1,347.00	Balance:
	Rate 1: 0.5%	Rate 2: 2%	Rate 3: 4.5%	Rate 4: 8%

Week No:	Pay for USC this period	Cumulative Pay for USC	Cumulative USC Rate 1 COP	Cumulative USC due at Rate 1	Cumulative USC Rate 2 COP	Cumulative USC due at Rate 2	Cumulative USC Rate 3 COP	Cumulative USC due at Rate 3	Cumulative USC due at Rate 4	Cumulative USC	USC deducted this period	USC refunded this period
A	B	C	D	E	F	G	H	I	J	K	L	M
1	1,500.00	1,500.00	231.00	1.15	440.77	4.19	1,347.00	40.78	12.24	58.36	58.36	-
2	1,500.00	3,000.00	462.00	2.31	881.54	8.39	2,694.00	81.56	24.48	116.74	58.38	-
3		3,000.00	693.00	3.46	1,322.31	12.58	4,041.00	75.49	-	91.53	-	25.21
4		3,000.00	924.00	4.62	1,763.08	16.78	5,388.00	55.66	-	77.06	-	14.47

Enter Pay for USC this period (Gross pay less approved salary sacrifice)	Enter cumulative pay for USC to date	This column is completed with USC Rate 1 COP	If column C > D, then column D @ 0.5%; Otherwise C @ 0.5%	This column is completed with USC Rate 2 COP	If column C > F, then (F - D) @ 2%; if column C > D but < or = F, then (C - D) @ 2% otherwise Nil	This column is completed with USC Rate 3 COP	If column C > H, then (H - F) @ 4.5%; if column C > F but < or = H, then (C - F) @ 4.5% otherwise Nil	If column C > H, then (C - H) @ 8%; otherwise Nil	Sum of column E + G + I + J	If column K in current week > K in previous week, enter the difference, otherwise Nil	If Column K in current week is < K in previous week, enter the difference, otherwise Nil
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Example 4

Sean earns €500 per week. In week 3 his gross pay including overtime is €555 and in week 4 his gross pay including overtime is €575. Sean is under 70 years of age and does not hold a medical card. Calculate his USC liability for weeks 1 to 4 on the Cumulative Basis.

Solution 4

See the following USC deduction card which outlines how his USC liability is calculated in weeks 1 to 4 on the Cumulative Basis. The following text illustrates the calculations contained in the USC deduction card.

In Week 1, his USC liability is calculated as follows

Pay for current week		€500.00
USC Rate 1 COP	€ 12,012.00 / 52 weeks =	€ 231.00
USC Rate 2 COP	€ 22,920.00 / 52 weeks =	€ 440.77
USC Rate 3 COP	€ 70,044.00 / 52 weeks =	€ 1,347.00
USC @ Rate 1	€ 231.00 @ 0.5% =	€ 1.15
USC @ Rate 2	€ 209.77 @ 2% =	€ 4.19
USC @ Rate 3	€ 59.23 @ 4.5% =	€ 2.66
USC liability		€8.00

In Week 2, his USC liability is calculated as follows

Cumulative pay	€500 + €500	€1,000.00
USC Rate 1 COP	€ 12,012.00 / 52 x 2 weeks =	€ 462.00
USC Rate 2 COP	€ 22,920.00 / 52 x 2 weeks =	€ 881.54
USC Rate 3 COP	€ 70,044.00 / 52 x 2 weeks =	€ 2,694.00
USC @ Rate 1	€ 462.00 @ 0.5% =	€ 2.31
USC @ Rate 2	€ 419.54 @ 2% =	€ 8.39
USC @ Rate 3	€ 118.46 @ 4.5% =	€ 5.33
Cumulative USC liability		€16.03
Less USC paid to date		(€8.00)
USC liability this period		€8.03

In Week 3, his USC liability is calculated as follows

<i>Cumulative pay</i>	$\text{€}500 + \text{€}500 + \text{€}555$	$\text{€}1,555.00$
<i>USC Rate 1 COP</i>	$\text{€}12,012.00 / 52 \times 3 \text{ weeks} =$	$\text{€}693.00$
<i>USC Rate 2 COP</i>	$\text{€}22,920.00 / 52 \times 3 \text{ weeks} =$	$\text{€}1,322.31$
<i>USC Rate 3 COP</i>	$\text{€}70,044.00 / 52 \times 3 \text{ weeks} =$	$\text{€}4,041.00$
<i>USC @ Rate 1</i>	$\text{€}693.00 @ 0.5\% =$	$\text{€}3.46$
<i>USC @ Rate 2</i>	$\text{€}629.31 @ 2\% =$	$\text{€}12.58$
<i>USC @ Rate 3</i>	$\text{€}232.69 @ 4.5\% =$	<u>$\text{€}10.47$</u>
<i>Cumulative USC liability</i>		<u>$\text{€}26.51$</u>
<i>Less USC paid to date</i>		<u>$(\text{€}16.03)$</u>
<i>USC liability this period</i>		<u>$\text{€}10.48$</u>

In Week 4, his USC liability is calculated as follows

<i>Cumulative pay</i>	$\text{€}500 + \text{€}500 + \text{€}555 + \text{€}575$	$\text{€}2,130.00$
<i>USC Rate 1 COP</i>	$\text{€}12,012.00 / 52 \times 4 \text{ weeks} =$	$\text{€}924.00$
<i>USC Rate 2 COP</i>	$\text{€}22,920.00 / 52 \times 4 \text{ weeks} =$	$\text{€}1,763.08$
<i>USC Rate 3 COP</i>	$\text{€}70,044.00 / 52 \times 4 \text{ weeks} =$	$\text{€}5,388.00$
<i>USC @ Rate 1</i>	$\text{€}924.00 @ 0.5\% =$	$\text{€}4.62$
<i>USC @ Rate 2</i>	$\text{€}839.08 @ 2\% =$	$\text{€}16.78$
<i>USC @ Rate 3</i>	$\text{€}366.92 @ 4.5\% =$	<u>$\text{€}16.51$</u>
<i>Cumulative USC liability</i>		<u>$\text{€}37.91$</u>
<i>Less USC paid to date</i>		<u>$(\text{€}26.51)$</u>
<i>USC liability this period</i>		<u>$\text{€}11.40$</u>

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Solution 4 Sean

Cumulative USC Deduction Card

Annual:	Rate 1 COP: €12,012.00	Rate 2 COP: €22,920.00	Rate 3 COP: €70,044.00	Balance:
Weekly:	Rate 1 COP: €231.00	Rate 2 COP: €440.77	Rate 3 COP: €1,347.00	Balance:
	Rate 1: 0.5%	Rate 2: 2%	Rate 3: 4.5%	Rate 4: 8%

Wee k No:	Pay for USC this period	Cumulative Pay for USC	Cumulative USC Rate 1	Cumulative USC due at Rate 1	Cumulative USC Rate 2	Cumulative USC due at Rate 2	Cumulative USC Rate 3	Cumulative USC due at Rate 3	Cumulative USC due at Rate 4	Cumulative USC	USC deducted this period	USC refunded this period
A	B	C	D	E	F	G	H	I	J	K	L	M
1	500.00	500.00	231.00	1.15	440.77	4.19	1,347.00	2.66	-	8.00	8.00	-
2	500.00	1,000.00	462.00	2.31	881.54	8.39	2,694.00	5.33	-	16.03	8.03	-
3	555.00	1,555.00	693.00	3.46	1,322.31	12.58	4,041.00	10.47	-	26.51	10.48	-
4	575.00	2,130.00	924.00	4.62	1,763.08	16.78	5,388.00	16.51	-	37.91	11.40	-
5			1,155.00		2,203.85		6,735.00					
6			1,386.00		2,644.62		8,082.00					
7			1,617.00		3,085.39		9,429.00					
8			1,848.00		3,526.16		10,776.00					

Example 5

Following on from example 4 Sean was paid €200 for 2 days work in weeks 5 and 6. In weeks 7 and 8 he was paid €500. Calculate his USC liability for weeks 5 to 8 inclusive under the Cumulative Basis.

Solution 5

See the following USC deduction card which outlines how his USC liability is calculated in weeks 5 to 8. The following text illustrates the calculations contained in the USC deduction card.

In Week 5, his USC liability is calculated as follows

Cumulative pay		€2,330.00
USC Rate 1 COP	€ 12,012.00 / 52 x 5 weeks =	€ 1,155.00
USC Rate 2 COP	€ 22,920.00 / 52 x 5 weeks =	€ 2,203.85
USC Rate 3 COP	€ 70,044.00 / 52 x 5 weeks =	€ 6,735.00
USC @ Rate 1	€ 1,155.00 @ 0.5% =	€ 5.77
USC @ Rate 2	€ 1,048.85 @ 2% =	€ 20.97
USC @ Rate 3	€ 126.15 @ 4.5% =	<u>€ 5.67</u> <u>€32.41</u>
Cumulative USC liability		€32.41
Less USC paid to date		<u>(€37.91)</u>
USC liability this period		<u>€5.50)</u>

In Week 6, his USC liability is calculated as follows

Cumulative pay		€2,530.00
USC Rate 1 COP	€ 12,012.00 / 52 x 6 weeks =	€ 1,386.00
USC Rate 2 COP	€ 22,920.00 / 52 x 6 weeks =	€ 2,644.62
USC Rate 3 COP	€ 70,044.00 / 52 x 6 weeks =	€ 8,082.00
USC @ Rate 1	€ 1,386.00 @ 0.5% =	€ 6.93
USC @ Rate 2	€ 1,144.00 @ 2% =	€ 22.88
USC @ Rate 3	€ 0.00 @ 4.5% =	<u>€ 0.00</u> <u>€29.81</u>
Cumulative USC liability		€29.81
Less USC paid to date		<u>(€32.41)</u>
USC liability this period		<u>€2.60)</u>

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In Week 7, his USC liability is calculated as follows

<i>Cumulative pay</i>		<i>€3,030.00</i>
<i>USC Rate 1 COP</i>	<i>€ 12,012.00 / 52 x 7 weeks =</i>	<i>€ 1,617.00</i>
<i>USC Rate 2 COP</i>	<i>€ 22,920.00 / 52 x 7 weeks =</i>	<i>€ 3,085.39</i>
<i>USC Rate 3 COP</i>	<i>€ 70,044.00 / 52 x 7 weeks =</i>	<i>€ 9,429.00</i>
<i>USC @ Rate 1</i>	<i>€ 1,617.00 @ 0.5% =</i>	<i>€ 8.08</i>
<i>USC @ Rate 2</i>	<i>€ 1,413.00 @ 2% =</i>	<i>€ 28.26</i>
<i>USC @ Rate 3</i>	<i>€ 0.00 @ 4.5% =</i>	<i>€ 0.00</i>
<i>Cumulative USC liability</i>		<i>€36.34</i>
<i>Less USC paid to date</i>		<i>(€29.81)</i>
<i>USC liability this period</i>		<i>€6.53</i>

In Week 8, his USC liability is calculated as follows

<i>Cumulative pay</i>		<i>€3,530.00</i>
<i>USC Rate 1 COP</i>	<i>€ 12,012.00 / 52 x 8 weeks =</i>	<i>€ 1,848.00</i>
<i>USC Rate 2 COP</i>	<i>€ 22,920.00 / 52 x 8 weeks =</i>	<i>€ 3,526.16</i>
<i>USC Rate 3 COP</i>	<i>€ 70,044.00 / 52 x 8 weeks =</i>	<i>€ 10,776.00</i>
<i>USC @ Rate 1</i>	<i>€ 1,848.00 @ 0.5% =</i>	<i>€ 9.24</i>
<i>USC @ Rate 2</i>	<i>€ 1,678.16 @ 2% =</i>	<i>€ 33.56</i>
<i>USC @ Rate 3</i>	<i>€ 3.84 @ 4.5% =</i>	<i>€ 0.17</i>
<i>Cumulative USC liability</i>		<i>€42.97</i>
<i>Less USC paid to date</i>		<i>(€36.34)</i>
<i>USC liability this period</i>		<i>€6.63</i>

Solution 5 Sean

Cumulative USC Deduction Card

<i>Annual:</i>	<i>Rate 1 COP:</i> €12,012.00	<i>Rate 2 COP:</i> €22,920.00	<i>Rate 3 COP:</i> €70,044.00	<i>Balance:</i>
<i>Weekly:</i>	<i>Rate 1 COP:</i> €231.00	<i>Rate 2 COP:</i> €440.77	<i>Rate 3 COP:</i> €1,347.00	<i>Balance:</i>
	<i>Rate 1:</i> 0.5%	<i>Rate 2:</i> 2%	<i>Rate 3:</i> 4.5%	<i>Rate 4:</i> 8%

Week No:	Pay for USC this period	Cumulative Pay for USC	Cumulative USC Rate 1 COP	Cumulative USC due at Rate 1	Cumulative USC Rate 2 COP	Cumulative USC due at Rate 2	Cumulative USC Rate 3 COP	Cumulative USC due at Rate 3	Cumulative USC due at Rate 4	Cumulative USC	USC deducted this period	USC refunded this period
A	B	C	D	E	F	G	H	I	J	K	L	M
1	500.00	500.00	231.00	1.15	440.77	4.19	1,347.00	2.66	-	8.00	8.00	-
2	500.00	1,000.00	462.00	2.31	881.54	8.39	2,694.00	5.33	-	16.03	8.03	-
3	555.00	1,555.00	693.00	3.46	1,322.31	12.58	4,041.00	10.47	-	26.51	10.48	-
4	575.00	2,130.00	924.00	4.62	1,763.08	16.78	5,388.00	16.51	-	37.91	11.40	-
5	200.00	2,330.00	1,155.00	5.77	2,203.85	20.97	6,735.00	5.67	-	32.41	-	5.50
6	200.00	2,530.00	1,386.00	6.93	2,644.62	22.88	8,082.00	-	-	29.81	-	2.60
7	500.00	3,030.00	1,617.00	8.08	3,085.39	28.26	9,429.00	-	-	36.34	6.53	-
8	500.00	3,530.00	1,848.00	9.24	3,526.16	33.56	10,776.00	0.17	-	42.97	6.63	-
9			2,079.00		3,966.93		12,123.00					
10			2,310.00		4,407.70		13,470.00					
11			2,541.00		4,848.47		14,817.00					
12			2,772.00		5,289.24		16,164.00					

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Under the Cumulative Basis of USC, an employee will have a minimum USC liability of 0.5% of his cumulative gross pay at any time during the tax year. A refund of the entire amount of USC deducted from an employee can only be made by the employer where the employer has been issued with an RPN which indicates that the employee is exempt from USC.

Under the Cumulative Basis of USC, where an employee is absent from work due to sickness or similar cause and is not entitled to be paid by the employer while on such an absence, the employee is entitled to request that the employer refund any USC due under the Cumulative Basis, if a cumulative RPN is held by the employer.

Under the Cumulative Basis of USC, where an employee is absent from work due to any reason other than sickness or similar cause (e.g. unpaid parental leave, unpaid maternity leave or unpaid adoptive leave) and is not entitled to be paid by the employer while on such an absence, the employer is obliged to refund any USC due to the employee under the Cumulative Basis, if a cumulative RPN is held by the employer.

Example 6

Following on from example 5, Sean was absent on unpaid parental leave from week 9 to week 16. Calculate his USC liability for weeks 9 to 16 inclusive on the Cumulative Basis.

Solution 6

See the following USC deduction card and text which outlines how his USC is calculated in weeks 9 to 16.

In Week 9, his USC liability is calculated as follows

<i>Cumulative pay</i>		<i>€3,530.00</i>
<i>USC Rate 1 COP</i>	<i>€ 12,012.00 / 52 x 9 weeks =</i>	<i>€ 2,079.00</i>
<i>USC Rate 2 COP</i>	<i>€ 22,920.00 / 52 x 9 weeks =</i>	<i>€ 3,966.93</i>
<i>USC Rate 3 COP</i>	<i>€ 70,044.00 / 52 x 9 weeks =</i>	<i>€ 12,123.00</i>
<i>USC @ Rate 1</i>	<i>€ 2,079.00 @ 0.5% =</i>	<i>€ 10.39</i>
<i>USC @ Rate 2</i>	<i>€ 1,451.00 @ 2% =</i>	<i>€ 29.02</i>
<i>USC @ Rate 3</i>	<i>€ 0.00 @ 4.5% =</i>	<i>€ 0.00</i>
<i>Cumulative USC liability</i>		<i>€39.41</i>
<i>Less USC paid to date</i>		<i>(€42.97)</i>
<i>USC liability this period</i>		<i>(€3.56)</i>

In Week 10, his USC liability is calculated as follows

<i>Cumulative pay</i>		<i>€3,530.00</i>
<i>USC Rate 1 COP</i>	<i>€ 12,012.00 / 52 x 10 weeks =</i>	<i>€ 2,310.00</i>
<i>USC Rate 2 COP</i>	<i>€ 22,920.00 / 52 x 10 weeks =</i>	<i>€ 4,407.70</i>
<i>USC Rate 3 COP</i>	<i>€ 70,044.00 / 52 x 10 weeks =</i>	<i>€ 13,470.00</i>
<i>USC @ Rate 1</i>	<i>€ 2,310.00 @ 0.5% =</i>	<i>€ 11.55</i>
<i>USC @ Rate 2</i>	<i>€ 1,220.00 @ 2% =</i>	<i>€ 24.40</i>
<i>USC @ Rate 3</i>	<i>€ 0.00 @ 4.5% =</i>	<i>€ 0.00</i>
<i>Cumulative USC liability</i>		<i>€35.95</i>
<i>Less USC paid to date</i>		<i>(€39.41)</i>
<i>USC liability this period</i>		<i>(€3.46)</i>

In Week 11, his USC liability is calculated as follows

<i>Cumulative pay</i>		<i>€3,530.00</i>
<i>USC Rate 1 COP</i>	<i>€ 12,012.00 / 52 x 11 weeks =</i>	<i>€ 2,541.00</i>
<i>USC Rate 2 COP</i>	<i>€ 22,920.00 / 52 x 11 weeks =</i>	<i>€ 4,848.47</i>
<i>USC Rate 3 COP</i>	<i>€ 70,044.00 / 52 x 11 weeks =</i>	<i>€ 14,817.00</i>
<i>USC @ Rate 1</i>	<i>€ 2,541.00 @ 0.5% =</i>	<i>€ 12.70</i>
<i>USC @ Rate 2</i>	<i>€ 989.00 @ 2% =</i>	<i>€ 19.78</i>
<i>USC @ Rate 3</i>	<i>€ 0.00 @ 4.5% =</i>	<i>€ 0.00</i>
<i>Cumulative USC liability</i>		<i>€32.48</i>
<i>Less USC paid to date</i>		<i>(€35.95)</i>
<i>USC liability this period</i>		<i>(€3.47)</i>

In Week 12, his USC liability is calculated as follows

<i>Cumulative pay</i>		<i>€3,530.00</i>
<i>USC Rate 1 COP</i>	<i>€ 12,012.00 / 52 x 12 weeks =</i>	<i>€ 2,772.00</i>
<i>USC Rate 2 COP</i>	<i>€ 22,920.00 / 52 x 12 weeks =</i>	<i>€ 5,289.24</i>
<i>USC Rate 3 COP</i>	<i>€ 70,044.00 / 52 x 12 weeks =</i>	<i>€ 16,164.00</i>
<i>USC @ Rate 1</i>	<i>€ 2,772.00 @ 0.5% =</i>	<i>€ 13.86</i>
<i>USC @ Rate 2</i>	<i>€ 758.00 @ 2% =</i>	<i>€ 15.16</i>
<i>USC @ Rate 3</i>	<i>€ 0.00 @ 4.5% =</i>	<i>€ 0.00</i>
<i>Cumulative USC liability</i>		<i>€29.02</i>
<i>Less USC paid to date</i>		<i>(€32.48)</i>
<i>USC liability this period</i>		<i>(€3.46)</i>

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In Week 16, his USC liability is calculated as follows

Cumulative pay		€3,530.00
USC Rate 1 COP	€ 12,012.00 / 52 x 16 weeks =	€ 3,696.00
USC Rate 2 COP	€ 22,920.00 / 52 x 16 weeks =	€ 7,052.32
USC Rate 3 COP	€ 70,044.00 / 52 x 16 weeks =	€ 21,552.00
USC @ Rate 1	€ 3,530.00 @ 0.5% =	€ 17.65
USC @ Rate 2	€ 0.00 @ 2% =	€ 0.00
USC @ Rate 3	€ 0.00 @ 4.5% =	<u>€ 0.00</u>
Cumulative USC liability		<u>€17.65</u>
Less USC paid to date		<u>(€18.62)</u>
USC liability this period		<u>(€0.97)</u>

A cumulative USC liability of €17.65 (€3,530 @ 0.5%) remains. This cannot be refunded by the employer during the tax year unless the employer receives an RPN indicating that the employee is exempt from USC. Assuming the employer does not receive such an RPN, the employee should seek any USC refund directly from Revenue following the end of the tax year. If the employer receives an RPN which indicates that the employee is exempt from USC, the employer should refund the total amount of USC deducted from the employee in the year to date.

Example 7

Following on from example 6, Sean has extended his parental leave and has also taken several weeks' unpaid leave from his employment. He returned to work in week 36 and will receive €500 per week until the end of the tax year.

As Sean believes he will not earn in excess of €13,000 in the current tax year, he contacted Revenue who issued a cumulative RPN to his employer with an exemption from USC, which was applied to the payroll in week 36.

Calculate his USC liability for weeks 36 to 38 under the Cumulative Basis.

Solution 7

See the following USC deduction card which outlines how his USC is calculated in weeks 36 to 38. The entire amount of USC paid to date (€17.65) is refunded to Sean in the week the USC exemption is applied.

Solution 6 Sean

Cumulative USC Deduction Card

<i>Annual:</i>	<i>Rate 1 COP:</i> €12,012.00	<i>Rate 2 COP:</i> €22,920.00	<i>Rate 3 COP:</i> €70,044.00	<i>Balance:</i>
<i>Weekly:</i>	<i>Rate 1 COP:</i> €231.00	<i>Rate 2 COP:</i> €440.77	<i>Rate 3 COP:</i> €1,347.00	<i>Balance:</i>
	<i>Rate 1:</i> 0.5%	<i>Rate 2:</i> 2%	<i>Rate 3:</i> 4.5%	<i>Rate 4:</i> 8%

Week No:	Pay for USC this period	Cumulative Pay for USC	Cumulative USC Rate 1 COP	Cumulative USC due at Rate 1	Cumulative USC Rate 2 COP	Cumulative USC due at Rate 2	Cumulative USC Rate 3 COP	Cumulative USC due at Rate 3	Cumulative USC due at Rate 4	Cumulative USC	USC deducted this period	USC refunded this period
A	B	C	D	E	F	G	H	I	J	K	L	M
8	500.00	3,530.00	1,848.00	9.24	3,526.16	33.56	10,776.00	0.17	-	42.97	6.63	-
9	-	3,530.00	2,079.00	10.39	3,966.93	29.02	12,123.00	-	-	39.41	-	3.56
10	-	3,530.00	2,310.00	11.55	4,407.70	24.40	13,470.00	-	-	35.95	-	3.46
11	-	3,530.00	2,541.00	12.70	4,848.47	19.78	14,817.00	-	-	32.48	-	3.47
12	-	3,530.00	2,772.00	13.86	5,289.24	15.16	16,164.00	-	-	29.02	-	3.46
13	-	3,530.00	3,003.00	15.01	5,730.01	10.54	17,511.00	-	-	25.55	-	3.47
14	-	3,530.00	3,234.00	16.17	6,170.78	5.92	18,858.00	-	-	22.09	-	3.46
15	-	3,530.00	3,465.00	17.32	6,611.55	1.30	20,205.00	-	-	18.62	-	3.47
16	-	3,530.00	3,696.00	17.65	7,052.32	-	21,552.00	-	-	17.65	-	0.97
17	-	3,530.00	3,927.00	17.65	7,493.09	-	22,899.00	-	-	17.65	-	-
18		3,530.00	4,158.00	17.65	7,933.86	-	24,246.00	-	-	17.65	-	-

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Solution 7 Sean

Cumulative USC Deduction Card

Annual:	Rate 1 COP: €12,012.00	Rate 2 COP: €22,920.00	Rate 3 COP: €70,044.00	Balance:
Weekly:	Rate 1 COP: €231.00	Rate 2 COP: €440.77	Rate 3 COP: €1,347.00	Balance:
	Rate 1: 0.5%	Rate 2: 2%	Rate 3: 4.5%	Rate 4: 8%

Week No:	Pay for USC this period	Cumulative Pay for USC	Cumulative USC Rate 1 COP	Cumulative USC due at Rate 1	Cumulative USC Rate 2 COP	Cumulative USC due at Rate 2	Cumulative USC Rate 3 COP	Cumulative USC due at Rate 3	Cumulative USC due at Rate 4	Cumulative USC	USC deducted this period	USC refunded this period
A	B	C	D	E	F	G	H	I	J	K	L	M
33		3,530.00	7,623.00	17.65	14,545.41	-	44,451.00	-	-	17.65	-	-
34		3,530.00	7,854.00	17.65	14,986.18	-	45,798.00	-	-	17.65	-	-
35		3,530.00	8,085.00	17.65	15,426.95	-	47,145.00	-	-	17.65	-	-
36	500.00	4,030.00	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	-	-	17.65
37	500.00	4,530.00	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	-	-	-
38	500.00	5,030.00	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	-	-	-

Example 8

Mary is a medical card holder and earns €375 per week. In week 3 she was paid an extra €50 for overtime. In week 4 she was paid €225 as she was absent for 2 days on unpaid leave. Complete her USC deduction card for weeks 1 to 4 inclusive to calculate her weekly USC liability.

Solution 8

See the following USC deduction card which outlines how her USC is calculated in weeks 1 to 4 on the Cumulative Basis.

Example 9

Abbie has been employed since the beginning of the tax year. She earns €420 per week. Her USC deduction card has been completed up to week 8. Abbie has been issued with a medical card and this was reflected in a new cumulative RPN issued by Revenue which was applied to the payroll in week 11.

Complete her USC deduction cards for week 9 to week 13 inclusive.

Solution 9

See the following USC deduction cards which outline how her USC is calculated in weeks 9 to 13 on the Cumulative Basis.

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Solution 8 Mary

Cumulative USC Deduction Card

Annual:	Rate 1 COP:	€12,012.00	Balance
Weekly:	Rate 1 COP:	€231.00	Balance
	Rate 1:	0.5%	Rate 2: 2%

Week No:	Pay for USC this period	Cumulative Pay for USC	Cumulative USC Rate 1 COP	Cumulative USC Due at Rate 1	Amount liable at Rate 2	Cumulative USC Due at Rate 2	Cumulative USC	USC Deducted this period	USC Refunded this Period
1	375.00	375.00	231.00	1.15	144.00	2.88	4.03	4.03	-
2	375.00	750.00	462.00	2.31	288.00	5.76	8.07	4.04	-
3	425.00	1,175.00	693.00	3.46	482.00	9.64	13.10	5.03	-
4	225.00	1,400.00	924.00	4.62	476.00	9.52	14.14	1.04	-
5			1,155.00						
6			1,386.00						
7			1,617.00						
8			1,848.00						

Solution 9 Abbie

Cumulative USC Deduction Card - No Medical Card

Annual:	Rate 1 COP: €12,012.00	Rate 2 COP: €22,920.00	Rate 3 COP: €70,044.00	Balance:
Weekly:	Rate 1 COP: €231.00	Rate 2 COP: €440.77	Rate 3 COP: €1,347.00	Balance:
	Rate 1: 0.5%	Rate 2: 2%	Rate 3: 4.5%	Rate 4: 8%

Week No:	Pay for USC this period	Cumulative Pay for USC	Cumulative USC Rate 1 COP	Cumulative USC due at Rate 1	Cumulative USC Rate 2 COP	Cumulative USC due at Rate 2	Cumulative USC Rate 3 COP	Cumulative USC due at Rate 3	Cumulative USC due at Rate 4	Cumulative USC	USC deducted this period	USC refunded this period
8	420.00	3,360.00	1,848.00	9.24	3,526.16	30.24	10,776.00	-	-	39.48	4.94	-
9	420.00	3,780.00	2,079.00	10.39	3,966.93	34.02	12,123.00	-	-	44.41	4.93	-
10	420.00	4,200.00	2,310.00	11.55	4,407.70	37.80	13,470.00	-	-	49.35	4.94	-

Cumulative USC Deduction Card - With Medical Card

Annual:	Rate 1 COP: €12,012.00	Rate 2 COP: Balance
Weekly:	Rate 1 COP: €231.00	Rate 2 COP: Balance
	Rate 1: 0.5%	Rate 2: 2%

Week No:	Pay for USC this period	Cumulative Pay for USC	Cumulative USC Rate 1 COP	Cumulative USC due at Rate 1	Amount liable at Rate 2	Cumulative USC due at Rate 2	Cumulative USC	USC deducted this period	USC refunded this period
10		4,200.00					49.35		
11	420.00	4,620.00	2,541.00	12.70	2,079.00	41.58	54.28	4.93	-
12	420.00	5,040.00	2,772.00	13.86	2,268.00	45.36	59.22	4.94	-
13	420.00	5,460.00	3,003.00	15.01	2,457.00	49.14	64.15	4.93	-
14			3,234.00						
15			3,465.00						

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7. Week 1/Month 1 (Non-Cumulative) Basis

In certain circumstances Revenue will issue an employer with an RPN which is to be applied on a Week 1 or Month 1 Basis. As mentioned in the chapter dealing with the Operation and Calculation of PAYE, Revenue may issue an RPN on a Week 1 or Month 1 Basis where:

- An individual takes up employment after a period of self-employment in the same tax year, or
- The employee's earnings for the period prior to taking up his new employment are unclear (e.g. where the individual was in receipt of a taxable payment from the DSP), or
- The employee's previous employer did not record a leave date for the employee in the final Payroll Submission for that employee, or
- The employee's tax credits have been reduced and applying the Cumulative Basis would result in an unacceptably large underpayment being collected in one pay period, or
- The employee is in receipt of certain taxable benefits from the DSP such as Illness, Maternity, Paternity, Adoptive or Parent's Benefit.

The Week 1/Month 1 Basis is the direct opposite of the Cumulative Basis, which means that the employee's gross pay and USC COPs are not accumulated for USC purposes. The gross pay for each pay period (week, fortnight or month) is dealt with in isolation and no account is taken of gross pay or USC deducted in previous pay periods. The USC COPs on a Week 1/Month 1 RPN are used in the calculation of USC due each week, or month in which a payment is made.

Where an employer holds a cumulative RPN and subsequently receives a Week 1 RPN, the Week 1 RPN takes effect from the first payday after the date of receipt.

Where an employer holds a Week 1 RPN and subsequently receives a cumulative RPN, the cumulative RPN takes effect from the first payday after the date of receipt. This means that the USC liability for the tax year to date must be recalculated in that pay period.

No refunds of USC may be made by the employer while the Week 1/Month 1 Basis is in operation.

Example 10

John Ford commenced a new job in month 5 earning €2,650 per month. As Revenue is unsure about John's previous earnings, they have issued an RPN on the Month 1 Basis which contained the standard USC COPs. Calculate his USC liability for May and June inclusive.

Solution 10

John's USC liability for May and June is calculated as follows on the Month 1 Basis:

Gross Pay		€2,650.00
USC Rate 1 COP	€ 12,012.00 / 12 months =	€ 1,001.00
USC Rate 2 COP	€ 22,920.00 / 12 months =	€ 1,910.00
USC Rate 3 COP	€ 70,044.00 / 12 months =	€ 5,837.00
USC @ Rate 1	€ 1,001.00 @ 0.5% =	€ 5.00
USC @ Rate 2	€ 909.00 @ 2% =	€ 18.18
USC @ Rate 3	€ 740.00 @ 4.5% =	€ 33.30
USC liability		€56.48
		€56.48

8. New Employee

When an employee commences a new employment, the employee should provide the employer with his PPS Number (PPSN). The employer must take reasonable measures to ensure that the PPSN provided refers to that employee.

The new employer can register the employment by requesting an RPN for the employee containing his start date. Where the former employer included a leave date on the final Payroll Submission for that employee, this will enable Revenue to transfer the employee's USC COPs to the new employer which will be reflected in the RPN issued to the new employer. Where the RPN is issued on the Cumulative Basis, it will also include the employee's cumulative gross pay and USC from any previous employment in the current tax year.

Where Revenue is unsure of an employee's previous earnings or where the employee continues to hold another employment, the RPN will generally issue on the Week 1 Basis with no USC COPs.

Employees can register a new employment online using the Jobs and Pension service which is available through myAccount, however they are not compelled to do so, unless it is the individual's first employment in Ireland.

If it is the employee's **first employment** in Ireland, he **must** register the employment online using the Jobs and Pensions service in order to register the employment. Once registered his employer will then receive an RPN for the employee. Where an RPN request is made by the employer prior to the employee registering his first employment on the Jobs and Pension service, a "No RPN found" message will be returned to the employer. The Emergency Basis of USC should be used where no RPN has been found and the employer should advise the employee to contact Revenue. The rules for operating the Emergency Basis of USC are explained later. Once an RPN is made available by Revenue to the new employer, USC should be operated in accordance with the details shown on that RPN.

Registering an employment is dealt with in more detail in the Chapter entitled "The PAYE System".

If the employer has not received a PPSN for the employee, he should operate the Emergency Basis of USC and advise the employee to contact Revenue.

An employee can also cease a previous employment in myAccount by entering a leave date in respect of that employment. An employee may consider doing this where a former employer has not yet submitted the leave date in a Payroll Submission to Revenue.

9. First Employment in a Tax Year

Where an employee commences his first employment in a tax year, Revenue may issue a cumulative RPN where they are satisfied that the individual has no income from a previous employment or self-employment in the current tax year, or any outstanding tax liabilities from a previous tax year (e.g. a student who commences employment mid-year).

Under the Cumulative Basis of USC, a person who commences work for the first time in April and receives his first payment in week 15 will have 15 weeks cumulative USC COPs available for use in his first pay period. This may result in him paying USC at the 0.5% rate for several weeks until his cumulative pay exceeds his cumulative USC Rate 1 COP. Once the cumulative

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USC Rate 1 COP has been exceeded, he will pay USC at the 0.5% and 2% rates, and when his cumulative pay exceeds his cumulative USC Rate 2 COP the employee will be liable to pay USC at the 0.5%, 2% and 4.5% rates, and if his cumulative pay exceeds his cumulative USC Rate 3 COP the employee will be liable to pay USC at the 0.5%, 2%, 4.5% and 8% rates.

Unlike Income tax, an employee will begin to pay USC from the first day he is paid unless the employee has been issued with an RPN which exempts him from USC. With regard to Income tax, an employee could be employed for a number of weeks before he would begin to pay tax due to the employee's cumulative tax credits being offset against his cumulative tax liability.

Under the Cumulative Basis of USC, an employee will have a minimum USC liability of 0.5% of his cumulative gross pay, unless he is exempt from USC.

Example 11

Brian commenced work for the first time in February and received his first payment in week 6. He earns €700 per week. A cumulative RPN was issued which contains the standard USC COPs.

Solution 11

See the following USC deduction card which illustrates this example. The following text explains some of the calculations on the USC deduction card.

In Week 6, his USC liability is calculated as follows

<i>Cumulative pay</i>		<i>€700.00</i>
<i>USC Rate 1 COP</i>	<i>€ 12,012.00 / 52 x 6 weeks =</i>	<i>€ 1,386.00</i>
<i>USC Rate 2 COP</i>	<i>€ 22,920.00 / 52 x 6 weeks =</i>	<i>€ 2,644.62</i>
<i>USC Rate 3 COP</i>	<i>€ 70,044.00 / 52 x 6 weeks =</i>	<i>€ 8,082.00</i>
<i>USC @ Rate 1</i>	<i>€ 700.00 @ 0.5% =</i>	<i>€ 3.50</i>
<i>USC @ Rate 2</i>	<i>€ 0.00 @ 2% =</i>	<i>€ 0.00</i>
<i>USC @ Rate 3</i>	<i>€ 0.00 @ 4.5% =</i>	<i>€ 0.00</i>
<i>Cumulative USC liability</i>		<i>€3.50</i>
<i>Less USC paid to date</i>		<i>€0.00</i>
<i>USC liability this period</i>		<i>€3.50</i>

In Week 7 his USC liability is also €3.50 which is calculated in a similar manner.

In Week 8, USC is payable at both 0.5% and 2% on the Cumulative Basis as follows:

<i>Cumulative pay</i>		<i>€2,100.00</i>
<i>USC Rate 1 COP</i>	<i>€ 12,012.00 / 52 x 8 weeks =</i>	<i>€ 1,848.00</i>
<i>USC Rate 2 COP</i>	<i>€ 22,920.00 / 52 x 8 weeks =</i>	<i>€ 3,526.16</i>
<i>USC Rate 3 COP</i>	<i>€ 70,044.00 / 52 x 8 weeks =</i>	<i>€ 10,776.00</i>
<i>USC @ Rate 1</i>	<i>€ 1,848.00 @ 0.5% =</i>	<i>€ 9.24</i>
<i>USC @ Rate 2</i>	<i>€ 252.00 @ 2% =</i>	<i>€ 5.04</i>
<i>USC @ Rate 3</i>	<i>€ 0.00 @ 4.5% =</i>	<i>€ 0.00</i>
<i>Cumulative USC liability</i>		<i>€14.28</i>
<i>Less USC paid to date</i>		<i>(€7.00)</i>
<i>USC liability this period</i>		<i>€7.28</i>

In Week 9, USC is payable at both 0.5% and 2% on the Cumulative Basis as follows:

<i>Cumulative pay</i>		<i>€2,800.00</i>
<i>USC Rate 1 COP</i>	<i>€ 12,012.00 / 52 x 9 weeks =</i>	<i>€ 2,079.00</i>
<i>USC Rate 2 COP</i>	<i>€ 22,920.00 / 52 x 9 weeks =</i>	<i>€ 3,966.93</i>
<i>USC Rate 3 COP</i>	<i>€ 70,044.00 / 52 x 9 weeks =</i>	<i>€ 12,123.00</i>
<i>USC @ Rate 1</i>	<i>€ 2,079.00 @ 0.5% =</i>	<i>€ 10.39</i>
<i>USC @ Rate 2</i>	<i>€ 721.00 @ 2% =</i>	<i>€ 14.42</i>
<i>USC @ Rate 3</i>	<i>€ 0.00 @ 4.5% =</i>	<i>€ 0.00</i>
<i>Cumulative USC liability</i>		<i>€24.81</i>
<i>Less USC paid to date</i>		<i>(€14.28)</i>
<i>USC liability this period</i>		<i>€10.53</i>

The calculation for Weeks 10 to 13 is similar to week 9.

In Week 14, USC is payable at 0.5%, 2% and 4.5% on the Cumulative Basis as follows:

<i>Cumulative pay</i>		<i>€6,300.00</i>
<i>USC Rate 1 COP</i>	<i>€ 12,012.00 / 52 x 14 weeks =</i>	<i>€ 3,234.00</i>
<i>USC Rate 2 COP</i>	<i>€ 22,920.00 / 52 x 14 weeks =</i>	<i>€ 6,170.78</i>
<i>USC Rate 3 COP</i>	<i>€ 70,044.00 / 52 x 14 weeks =</i>	<i>€ 18,858.00</i>
<i>USC @ Rate 1</i>	<i>€ 3,234.00 @ 0.5% =</i>	<i>€ 16.17</i>
<i>USC @ Rate 2</i>	<i>€ 2,936.78 @ 2% =</i>	<i>€ 58.73</i>
<i>USC @ Rate 3</i>	<i>€ 129.22 @ 4.5% =</i>	<i>€ 5.81</i>
<i>Cumulative USC liability</i>		<i>€80.71</i>
<i>Less USC paid to date</i>		<i>(€66.95)</i>
<i>USC liability this period</i>		<i>€13.76</i>

It can be seen from the above calculations, that an employee can earn the same amount of pay in 2 consecutive weeks but have a different USC liability in each of these weeks due to the operation of the Cumulative Basis of USC. This is similar to the operation of the Cumulative Basis of tax.

CHAPTER 12

Solution 11 Brian

Cumulative USC Deduction Card

Annual:	Rate 1 COP: €12,012.00	Rate 2 COP: €22,920.00	Rate 3 COP: €70,044.00	Balance:
Weekly:	Rate 1 COP: €231.00	Rate 2 COP: €440.77	Rate 3 COP: €1,347.00	Balance:
	Rate 1: 0.5%	Rate 2: 2%	Rate 3: 4.5%	Rate 4: 8%

Week No:	Pay for USC this period	Cumulative Pay for USC	Cumulative USC Rate 1 COP	Cumulative USC due at Rate 1	Cumulative USC Rate 2 COP	Cumulative USC due at Rate 2	Cumulative USC Rate 3 COP	Cumulative USC due at Rate 3	Cumulative USC due at Rate 4	Cumulative USC	USC deducted this period	USC refunded this period
A	B	C	D	E	F	G	H	I	J	K	L	M
1	-	-	231.00	-	440.77	-	1,347.00	-	-	-	-	-
2	-	-	462.00	-	881.54	-	2,694.00	-	-	-	-	-
3	-	-	693.00	-	1,322.31	-	4,041.00	-	-	-	-	-
4	-	-	924.00	-	1,763.08	-	5,388.00	-	-	-	-	-
5	-	-	1,155.00	-	2,203.85	-	6,735.00	-	-	-	-	-
6	700.00	700.00	1,386.00	3.50	2,644.62	-	8,082.00	-	-	3.50	3.50	-
7	700.00	1,400.00	1,617.00	7.00	3,085.39	-	9,429.00	-	-	7.00	3.50	-
8	700.00	2,100.00	1,848.00	9.24	3,526.16	5.04	10,776.00	-	-	14.28	7.28	-
9	700.00	2,800.00	2,079.00	10.39	3,966.93	14.42	12,123.00	-	-	24.81	10.53	-
10	700.00	3,500.00	2,310.00	11.55	4,407.70	23.80	13,470.00	-	-	35.35	10.54	-
11	700.00	4,200.00	2,541.00	12.70	4,848.47	33.18	14,817.00	-	-	45.88	10.53	-
12	700.00	4,900.00	2,772.00	13.86	5,289.24	42.56	16,164.00	-	-	56.42	10.54	-
13	700.00	5,600.00	3,003.00	15.01	5,730.01	51.94	17,511.00	-	-	66.95	10.53	-
14	700.00	6,300.00	3,234.00	16.17	6,170.78	58.73	18,858.00	5.81	-	80.71	13.76	-
15	700.00	7,000.00	3,465.00	17.32	6,611.55	62.93	20,205.00	17.48	-	97.73	17.02	-
16	700.00	7,700.00	3,696.00	18.48	7,052.32	67.12	21,552.00	29.14	-	114.74	17.01	-

10. The Emergency Basis

An employer is obliged to operate the Emergency Basis of USC where:⁷⁷

- The employer has not received a PPSN from a new employee, or
- The employer holds the employee's PPSN and requested an RPN, but no RPN is available as the employee has not yet registered for PAYE with Revenue.

An employee is required to register his first employment in Ireland online using the Jobs and Pension service in myAccount.

The Emergency Basis of USC applies in tandem with the Emergency Basis of tax.

Unlike the Emergency Basis of tax, the Emergency Basis of USC is calculated at the maximum rate of USC chargeable through payroll (currently 8%) with no USC COPs, from the first payment received by the employee. Whether or not an employee provides his PPSN to his employer has no impact on the rate of USC chargeable under the Emergency Basis. The maximum rate also applies regardless of the individual's age, medical card status or aggregate annual income.

If an employer operates the Emergency Basis of USC and then subsequently receives a cumulative RPN for that employee, the employer is obliged to apply the latest RPN with immediate effect. It will override the Emergency Basis and when the employer recalculates the employee's cumulative USC liability in accordance with the details on the RPN, this usually (but not always), results in a USC refund for the employee.

Example 12

Tom Dunne commenced employment in week 1 and earns €800 per week. Tom is subject to USC on the Emergency Basis for the first 4 weeks of his employment as he did not provide his PPSN to his employer. He provided it to his employer in week 5 and a cumulative RPN was received by his employer in week 5. Calculate Tom's USC liability for weeks 1 to 7.

Solution 12

See the following Emergency and Cumulative USC Deduction Cards which illustrate his weekly USC liability.

⁷⁷ Universal Social Charge Regulations 2018 – S.I. 510/2018 – Regulation 19

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Solution 12 Tom Dunne

Emergency USC Deduction Card

Rate 1 COP:	€0.00	Rate 2 COP:	€0.00
Rate 1:	0.5%	Rate 2:	2%

Rate 3 COP:	€0.00	Balance:	
Rate 3:	4.5%	Rate 4:	8%

Week No:	Pay for USC this period	USC Rate 1 COP	USC Due at Rate 1	USC Rate 2 COP	USC Due at Rate 2	USC Rate 3 COP	USC Due at Rate 3	USC Due at Rate 4	USC deducted this period
1	800.00	0.00	-	0.00	-	0.00	-	64.00	64.00
2	800.00	0.00	-	0.00	-	0.00	-	64.00	64.00
3	800.00	0.00	-	0.00	-	0.00	-	64.00	64.00
4	800.00	0.00	-	0.00	-	0.00	-	64.00	64.00
3,200.00			<i>Figures to be transferred to cumulative USC Deduction Card</i>					256.00	

Cumulative USC Deduction Card

Annual:	Rate 1 COP: €12,012.00	Rate 2 COP: €22,920.00	Rate 3 COP: 70,044.00	Balance:
Weekly:	Rate 1 COP: €231.00	Rate 2 COP: €440.77	Rate 3 COP: €1,347.00	Balance:

Week No:	Pay for USC this period	Cumulative Pay for USC	Cumulative USC Rate 1 COP	Cumulative USC Due at Rate 1	Cumulative USC Rate 2 COP	Cumulative USC Due at Rate 2	Cumulative USC Rate 3 COP	Cumulative USC Due at Rate 3	Cumulative USC Due at Rate 4	Cumulative USC	USC deducted this period	USC refunded this Period
4		3,200.00	924.00		1,763.08		5,388.00			256.00		
5	800.00	4,000.00	1,155.00	5.77	2,203.85	20.98	6,735.00	80.83	-	107.57	-	148.43
6	800.00	4,800.00	1,386.00	6.93	2,644.62	25.17	8,082.00	96.99	-	129.09	21.52	
7	800.00	5,600.00	1,617.00	8.08	3,085.39	29.37	9,429.00	113.16	-	150.61	21.52	-

11. Week 53

There are 52 weeks and 1 day in a normal 365 day year. This means that in certain circumstances 53 weekly paydays can arise in a tax year (i.e. where the first day and the last day of the tax year (last day or second last day in a leap year) are normal paydays for a weekly paid employee). In that case, an individual's annual USC COPs will have been utilised in full after 52 paydays.

Revenue allows a concession, whereby an extra week's USC COPs are granted on a Week 1 Basis in the 53rd payday of the year, equivalent to a normal week's USC COPs. Where applicable, this means that the USC in the 53rd payday in the year is a normal week's deduction.

The same principle applies in the 27th fortnightly pay period of the year where the employee receives 2 extra weeks' USC COPs, or in the 14th 4-weekly pay period of the year where the employee receives an extra 4 weeks' USC COPs. Monthly paid employees only receive 12 monthly payments in a tax year, so this issue does not affect them.

The following summary illustrates the tax treatment which should apply in week 53:

USC basis in operation	Payroll treatment in Week 53
Cumulative Basis on RPN	Week 1 Basis based on 1/52 nd of the USC COPs shown on latest RPN
Week 1 Basis on RPN	Week 1 Basis based on 1/52 nd of the USC COPs shown on the latest RPN
Emergency Basis	Emergency Basis continues in absence of an RPN
USC Exemption on RPN	USC Exemption continues to apply

In relation to the table above, when using payroll software, the change above (i.e. Week 1 Basis being applied to those employees for whom a cumulative RPN is held) is generally performed automatically by the software in a Week 53 payroll.

The legislation provides that where an employer changes an employee's normal pay day, for whatever reason, during the current or preceding tax year, resulting in a Week 53, Fortnight 27 or 14th 4-weekly pay period, he is not entitled to an additional week's tax credits and SRCOP as outlined above.

In addition, where a payment, including a notional payment, is made to an employee on 31st December and this is not the employee's normal payday, the additional USC COPs will not apply. However, an employer should apply the Week 53 payroll treatment as outlined in the table above and it will be up to Revenue to police whether an employee is entitled to the extra week's USC COPs when carrying out an end of year review of the individual's USC liability.

Example 13

Sarah is employed and earns €1,200 per week. Her employer holds a cumulative RPN containing the standard USC COPs. Calculate her USC liability for Week 53.

Solution 13

Sarah's USC liability for Week 53 is calculated on the Week 1 Basis as follows:

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<i>Gross Pay</i>		<i>€1,200.00</i>
<i>USC Rate 1 COP</i>	<i>€ 12,012.00 / 52 weeks =</i>	<i>€ 231.00</i>
<i>USC Rate 2 COP</i>	<i>€ 22,920.00 / 52 weeks =</i>	<i>€ 440.77</i>
<i>USC Rate 3 COP</i>	<i>€ 70,044.00 / 52 weeks =</i>	<i>€ 1,347.00</i>
<i>USC @ Rate 1</i>	<i>€ 231.00 @ 0.5% =</i>	<i>€ 1.15</i>
<i>USC @ Rate 2</i>	<i>€ 209.77 @ 2% =</i>	<i>€ 4.19</i>
<i>USC @ Rate 3</i>	<i>€ 759.23 @ 4.5% =</i>	<i>€ 34.16</i>
<i>USC liability</i>		<i>€39.50</i>

List of Social Welfare-like Payments

Payments made by the Dept. of Social Protection

- Rural Social Scheme
- Farm/Fish Assist
- Community Employment Scheme
- Tús (community work placement initiative)
- Job Initiative Scheme

Payments made by the Health Service Executive (HSE):

- Blind Welfare Allowance
- Mobility Allowance

Payments made by the Dept. of Education:

- Vocational Training Opportunities Scheme (VTOS)
- Youthreach Training Allowances
- Fund for Students with Disabilities
- Student Assistance Fund
- Non-apprentice payments for trainees attending a course that is funded by SOLAS

Payments made by Foreign Governments:

- Social Welfare-type payments received from another country

Exempt Income Sources

Section	Title
42	Interest on Savings Certificates
112B	Exemption from BIK – Granting of Vouchers (Small Benefit Exemption)
118	Exemption from BIK – Travel Pass, Cycle to Work Scheme; Medical Check-up; Health care; Covid-19 test; Flu vaccine.
128F	Gain arising on exercise of qualifying KEEP share option
153	Distributions to certain non-residents
189	Payments in respect of personal injuries
189A	Special trust for permanently incapacitated
190	Haemophilia Trust
191	Hepatitis C
192	Thalidomide
192A	Exemption in respect of certain payments under employment law
192BA	Exemption in respect of certain payments made or authorised by Child and Family Agency
192C	Nursing Home Support Scheme
192D	Fuel Grant
192E	Water Conservation Grant
192F	Exemption in respect of certain education-related payments
192G	Exemption in respect of training allowance payments
192H	Exemption in respect of Mobility Allowance
192I	Exemption in respect of Pandemic Placement Grant
192J	Exemption in respect of Electricity Costs Emergency Benefit Payment
192K	Exemption in respect of Pandemic Special Recognition Payment
192L	Exemption in respect of incorrect birth registration certificate
192M	Exemption in respect of payments under Covid-19 Death in Service Ex-Gratia Scheme for Health Care Workers
193	Income from Scholarships
194	Child Benefit
194A	Early Childcare Supplement
194AA	Certain Childcare Support Payments
194B	Back to Work Family Dividend
195A	Exemption in respect of certain expense payments
195B	Exemption for certain expenses incurred by non-resident, non-executive directors
195C	Exemption for certain expenses incurred by State Examination Commission examiners
195D	Exemption for certain expense payments for resident relevant directors
196	Expenses of members of Judiciary
196A	State Employees: Foreign Service Allowance
196B	Employee of certain agencies: Foreign Service Allowances
197	Bonus or interest paid under instalment savings schemes
198	Certain interest not to be chargeable
199	Interest on certain securities
200	Certain foreign pensions
201	Tax free element of a termination payment including SCSB
203	Lump sum weekly payments in or resettlement allowances paid under section 123 (Redundancy) Payments Act, 1967
204	Military & other pensions, gratuities and allowances

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204B	Compensation for certain living donors (donation for kidney transplant)
205	Veterans of war of independence
205A	Magdalen laundry payments
216A	Rent a Room relief
216B	Scéim na bhFoghlaimeoirí Gaeilge
216C	Childcare service relief
782A	Pre-retirement access to AVCs

Note: Sections above refer to the relevant sections of the **Taxes Consolidation Act, 1997.**

CHAPTER 13

Additional Superannuation Contribution

- 1. Introduction**
 - 2. Who is liable to pay ASC?**
 - 3. Definition of a Public Servant**
 - 4. Public Service Body**
 - 5. Bodies excluded from the definition of a “Public Service Body”**
 - 6. ASC10 Employment Declaration Form**
 - 7. ASC Exemptions**
 - 8. Pensionable Pay for ASC Purposes**
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 - 11. Dealing with Cessations**
 - 12. ASC Certificates and Forms**
 - 13. End of Year Review**
 - 14. ASC Records and Reporting**
 - 15. ASC and Employee Pension Tax Relief Limits**
 - 16. Previous Service Recognised for Pension Purposes**
 - 17. Payment in lieu of Membership of a Public Service Pension Scheme**
 - 18. Payslips**
-

1. Introduction

The Additional Superannuation Contribution (ASC), came into effect on 1st January 2019 and replaced the Pension Related Deduction (PRD) which was abolished at the end of 2018.¹

ASC is a deduction from the remuneration of public servants to fund existing pension benefits. No additional pension benefit accrues from this deduction. While PRD was a temporary measure, ASC is a permanent contribution.

2. Who is liable to pay ASC?

This deduction applies to a public servant who is in receipt of pensionable pay and:

- (i) Is a member of a public service pension scheme,
- (ii) Receives a payment in lieu of membership in such a scheme, or
- (iii) Is entitled to an ex-gratia retirement gratuity (annual or lump sum) on retirement.

¹ Public Sector Pay and Pensions Act 2017, Part 4

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ASC is deducted from the pensionable pay of a public servant employed by a public service employer where any one of the above conditions is met.

Where an employee commences a new pensionable employment with a public service employer he is automatically liable to pay ASC. As most employments (including temporary and part-time positions) in the public service are pensionable, the majority of public servants will automatically be liable to pay ASC.

ASC only applies where the earnings are pensionable. If an employee commenced a non-pensionable employment in the public service (e.g. interview board, board members, etc.) he will not be liable to pay ASC in that employment (as the earnings are not pensionable), even if he has a preserved public service pension entitlement from a concurrent or previous public service employment.

Certain ministerial appointments, such as special advisers to Government Ministers, have the option of receiving a payment in lieu of membership of the public service pension scheme, with the maximum payment being 11% of salary. Any employee in receipt of such a payment is also liable to pay ASC.

Example 1

Mary is a public servant employed in a pensionable capacity in a Government Department. She is liable to pay ASC.

Example 2

Mary is a public servant employed in a pensionable capacity in a Government Department. She has been selected to sit on the board of another public service body. The board membership carries no public service pension entitlement.

*Mary is liable to pay ASC in respect of her pensionable employment. As the board membership is not pensionable, she is **not** liable to pay ASC in respect of the earnings from this position.*

Example 3

Philip is a barrister and is not a public servant. He has been selected to sit on the board of a public service body due to his legal expertise. The board membership carries no public service pension entitlements. Philip is not liable to pay ASC on his fees as he has no public service pension entitlement.

Example 4

Anne is a public servant employed in a pensionable capacity by two separate Education and Training Boards (ETBs) in Dublin. An ASC liability arises in respect of each of these employments as they are both pensionable.

Example 5

Peter is a retired public servant in receipt of a public service pension. He has taken up a non-pensionable part-time employment with a public service employer. Peter is not liable to pay ASC in respect of his earnings from his part-time employment as the income from this employment is non-pensionable.

3. Definition of a Public Servant

A ‘public servant’ is defined as:²

- a) A person who is employed by, or who holds any office or any other position, in a public service body,
- b) A member of either House of the Oireachtas or of a local authority (within the meaning of the **Local Government Act 2001**),
- c) A member of the European Parliament for a constituency in the State, being a member who is in receipt of the allowance referred to in section 2 of the **European Assembly (Irish Representatives) Act 1979**,
- d) The holder of a qualifying office,
- e) A judge,
- f) A military judge appointed under Chapter IVC of Part V of the **Defence Act 1954** (as amended by the **Defence (Amendment) Act 2011**).

It does not include the President, however if the President were to take up a pensionable office in a public service body at the expiration of his term as President, he would then become a Public Servant again.

4. Public Service Body

A ‘public service body’ is defined as:³

- a) The Civil Service,
- b) An Garda Síochána,
- c) The Permanent Defence Force,
- d) A local authority for the purposes of the **Local Government Act 2001**,
- e) The Health Service Executive,
- f) The Central Bank of Ireland,
- g) An Education and Training Board,
- h) A body (other than an excluded body as listed below) that is wholly or partly funded out of public finances and in respect of which a public service pension scheme exists or applies or may be made.

5. Bodies excluded from the definition of a ‘Public Service Body’

The following bodies are excluded from the definition of a ‘public service body’:.⁴

- Any body-corporate established by Act of Parliament before 6th December 1922 that, upon its establishment, was of a commercial character
- Dublin Airport Authority, public limited company
- Cork Airport Authority, public limited company
- Shannon Airport Authority, public limited company
- Ervia (formally Bord Gáis Éireann)
- Greyhound Racing Ireland - Rásáiocht Con Eireann (formally Bord na gCon)
- Bord na Móna
- Córas Iompair Éireann
- Coillte Teoranta
- Electricity Supply Board

² Financial Emergency Measures in the Public Interest Act 2009, Section 1 as amended by Financial Emergency Measures in the Public Interest Act 2011

³ Financial Emergency Measures in the Public Interest Act 2009, Section 1

⁴ Financial Emergency Measures in the Public Interest Act 2009, Schedule

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- Eirgrid
- A harbour authority within the meaning of the **Harbours Act 1946** or company to which section 7 of the **Harbours Act 1996** relates
- Horse Racing Ireland
- Irish National Stud Company Limited
- Irish Aviation Authority
- An Post
- Premier Lotteries Ireland Limited
- Radio Teilifís Éireann
- Teilifís na Gaeilge
- Railway Procurement Agency
- Voluntary Health Insurance Board
- National Treasury Management Agency
- A subsidiary of a body to which this Schedule relates, including a subsidiary of any such subsidiary.

6. ASC10 – Employment Declaration Form

In order to determine if a public servant is liable to pay ASC, and if so, what rate of ASC should be deducted, each public service employer should ensure that all employees employed by them complete an ASC10 Employment Declaration Form (see copy at the end of this chapter) and return it to their employer. The purpose of the ASC10 Form is to identify the employee's public sector pension entitlement in this employment and to identify any other public service employments held by the employee (if applicable). If the individual has more than one public service employment, he should complete an ASC10 Form for each public service employer.

Where the individual has more than one public service employment, the employee must state the employer registration number of other public service employers on the form. In addition, the employee must nominate which employer is his "main employer" for ASC purposes, with any other public service employment held by the individual being regarded as his "subsidiary employer". This allows the main employer to allocate the ASC thresholds (weekly, fortnightly or monthly as appropriate) to any pensionable payments made to the employee. The subsidiary employer is only required to deduct ASC where the payment made by that employer is pensionable, in which case ASC should be deducted at the maximum rate depending on which pension scheme the employee is a member of. ASC rates and thresholds are covered below.

The employee is required to give details of any entitlements that he has from a public service pension scheme, whether from this employment or any other public service employment he currently holds. Based on the information supplied on this form by the employee and the particulars relating to his current employment, the employer can make a decision as to whether or not the individual is liable to pay ASC. Where the earnings from a public service employment are not pensionable, ASC will not be payable.

7. ASC Exemptions

There are no ASC exemptions based on personal circumstances. Any public servant in receipt of pensionable pay from a public service body is liable to pay ASC where he is either:

- A member of a public service pension scheme, or
- In receipt of a payment in lieu of membership of a public service pension scheme, or
- Entitled to an ex-gratia retirement gratuity (annual or lump sum) on retirement.

There are no special exemptions for medical card holders, temporary or part-time staff, etc.

8. Pensionable Pay for ASC Purposes

ASC is payable on the pensionable pay of a public servant in each pay period. Pensionable pay is defined as:

1. Basic pay (excluding overtime*) payable in respect of that pay period, and
2. Any other pensionable allowance, emolument or premium pay due to the employee, which is treated as pensionable pay,

as reduced by the amount forgone under a Revenue approved salary sacrifice (i.e. the amount of salary sacrificed for a travel pass or a bicycle up to a maximum of €1,250 (€1,500 for an electric bicycle or €3,000 for a cargo bicycle) can be deducted from pensionable pay before calculating ASC).

*In certain cases overtime may be regular rostered overtime and deemed to be pensionable. However, for the purposes of this chapter it is assumed that overtime payments are not pensionable.

This means that all pensionable payments including wages or salary, arrears, pensionable allowances, holiday pay, maternity pay, paternity pay, sick pay, etc. are liable to ASC. ASC should be calculated on an employee's pensionable pay as reduced by any approved salary sacrifice but before deductions for pension contributions, AVCs, Tax, PRSI and USC.

All employees who are liable for ASC (regardless of their date of appointment or whether main scheme contributions apply) are required to pay ASC on pensionable allowances as and when paid. Furthermore, there shall be no refunds of ASC charged on pensionable allowances where such allowances are not included in the employee's final pensionable remuneration at time of retirement.

When absent on sick leave, ASC should be calculated on the pensionable pay. This generally refers to the full pay the public servant would have received had they not been absent on sick leave. For example, where the public servant has exhausted sick leave on full pay and moves to half pay, the full pay is regarded as the pensionable pay. ASC (and pension contributions) should be calculated based on this amount. Pensionable pay also refers to the amount of pay before any adjustment is made for Illness Benefit (or Maternity Benefit or Paternity Benefit where the employee is absent on maternity or paternity leave).

Where an employee continues in a public service employment having accumulated his maximum pension entitlement (e.g. where an employee continues in employment having attained 40 years membership of a standard accrual pension scheme or 30 years in respect of a fast accrual pension scheme), they continue to pay pension contributions and ASC will continue to apply, since they continue to accrue a pension benefit as their final pensionable remuneration is determined at the date of retirement.

Any payment which is not pensionable is not liable to ASC, for example:

- Benefits in Kind,
- Non-pensionable payments such as the reimbursement of expenses or the payment of travel and subsistence rates in accordance with the civil service rules,
- Statutory Redundancy,

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- Termination payments whether taxable or non-taxable,
- Temporary Rehabilitation Remuneration (TRR) which may be payable to an employee who has exhausted his entitlement under the public service sick pay scheme. The period during which TRR is payable is not reckonable for superannuation purposes and therefore is not subject to ASC,
- Compensation for unpaid annual leave on cessation of employment, or
- Payments received from a Revenue approved Permanent Health Insurance scheme.

9. ASC Rates and Thresholds

The ASC rates and thresholds that apply depend on what public service pension scheme the public servant is a member of. The 3 categories of public service pension schemes are:

- **Pre-2013 Standard Accrual Pension Scheme** – applies to most public servants (e.g. teachers, healthcare workers, local authority employees, etc.) recruited prior to 1st January 2013 where the individual qualifies for the maximum public service pension after 40 years' service
- **Single Public Service Pension Scheme (SPSPS)** – applies to any public servant recruited since 1st January 2013. An exception to this general rule applies where an individual commences a new pensionable public service employment since 1st January 2013 and is currently a member of another pre-2013 standard accrual pension scheme or commenced a new pensionable employment within 26 weeks of ceasing a previous public service employment in which the individual was a member of a pre-2013 pension scheme. In this case the employee should be registered as a member of the pre-2013 standard accrual pension scheme in the new employment.
- **Pre-2013 Fast Accrual Pension Scheme** – applies to certain public servants appointed prior to 1st January 2013 where the individual qualifies for the maximum public service pension after 30 years' service (e.g. Gardaí, Military, Prison Officers, Firefighters, Judges, TDs, Senators and Ministers).

In order to calculate ASC, employees will have to be assigned to the correct pension scheme on the payroll system. The rate of ASC payable by public servants is outlined in the following tables:

Public Servants who are Members of a pre-2013 Standard Accrual Pension Scheme

1 st January 2023						
	Annual	Weekly	Fortnightly	Monthly	Quarterly	%
First	€34,500	€663.46	€1,326.92	€2,875.00	€8,625.00	0%
Next	€25,500	€490.38	€980.77	€2,125.00	€6,375.00	10%
Balance						10.5%

Public Servants who are Members of the Single Public Service Pension Scheme

1 st January 2023						
	Annual	Weekly	Fortnightly	Monthly	Quarterly	%
First	€34,500	€663.46	€1,326.92	€2,875.00	€8,625.00	0%
Next	€25,500	€490.38	€980.77	€2,125.00	€6,375.00	3.33%
Balance						3.5%

Public Servants who are Members of a pre-2013 Fast Accrual Pension Scheme

1 st January 2023						
	Annual	Weekly	Fortnightly	Monthly	Quarterly	%
First	€28,750	€552.88	€1,105.77	€2,395.83	€7,187.50	0%
Next	€31,250	€600.96	€1,201.92	€2,604.17	€7,812.50	10%
Balance						10.5%

In practice, most public servants hold one pensionable public service employment. Hence their employer will apply the rates and thresholds as listed in the appropriate table above, depending on which pension scheme the employee is a member of.

The ASC rates and thresholds apply to the individual and not to each public service employment held by the individual. Where a public servant holds two or more public service employments, ASC will only be payable where the earnings from that employment are pensionable. Hence if the earnings from one employment were pensionable and the earnings from the second employment were not pensionable, ASC would only be payable on the pensionable earnings from the first employment. If the earnings from both employments were pensionable, ASC should be deducted by both employers. The employee should not receive the benefit of the above rates and thresholds with each public service employer. The appropriate rates and thresholds outlined above should be granted by the nominated main employer as identified on the employee's ASC10 Employment Declaration Form and each subsidiary employer should deduct ASC at the maximum rate on all earnings.

The maximum rate could be 3.5% or 10.5% depending on which pension scheme the employee is a member of. Where an individual is a member of more than 1 public service pension scheme in any particular year, then:

- a) Where the person is a member of the SPSPS in that year, the person shall be deemed to be a member of the SPSPS for that year to the exclusion of the other schemes,
- b) Where the person is a member of a pre-2013 standard accrual pension scheme in that year and is not a member of the SPSPS, the person shall be deemed to be a member of a standard accrual pension scheme for that year to the exclusion of the other schemes,
- c) Where the person is not a member of the SPSPS or a pre-2013 standard accrual pension scheme in that year he will be deemed to be a member of a fast accrual scheme to the exclusion of the other schemes.

As an individual is not liable to pay the highest rate of ASC until his annual earnings exceed €60,000, in some cases it may appear as if the subsidiary employer is over-deducting ASC where the individual's combined annual earnings do not exceed €60,000. Where an employee feels he is entitled to an ASC refund, he should submit a copy of his ASC60s or ASC45s as appropriate to his nominated main employer and ask that main employer to make any ASC refund which may be due.

Example 6

Mary is employed part-time by a local authority and is a member of the SPSPS. Her weekly salary (pensionable pay) is €250. Calculate her weekly ASC liability.

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Solution 6

As Mary's pensionable pay is less than the weekly exemption threshold of €663.46, no ASC liability arises.

Example 7

Martha is employed by a local authority and is a member of a standard accrual pension scheme. She is paid a salary of €700 per week. Calculate her weekly ASC liability.

Solution 7

Pensionable pay		<u>€700.00</u>
First	€663.46 @ 0% =	€0.00
Balance	€36.54 @ 10% =	<u>€3.65</u>
ASC liability		€3.65

Example 8

Mark is employed by a Government Department and is a member of the SPSPS. He is paid a salary (pensionable pay) of €3,500 per month. He also received €50 overtime and €129.72 for travel and subsistence this month. Calculate his ASC liability this month.

Solution 8

Pensionable pay		<u>€3,500.00</u>
First	€2,875.00 @ 0% =	€0.00
Balance	€625.00 @ 3.33% =	<u>€20.81</u>
Monthly ASC liability:		€20.81

Neither the overtime nor the travel and subsistence payment are liable to ASC.

Example 9

Angela is employed by the HSE and is paid a salary of €1,500 per fortnight. She contributes €60.36 per fortnight to the standard accrual pension scheme. Calculate her fortnightly ASC liability.

Solution 9

Pensionable pay		<u>€1,500.00</u>
First	€1,326.92 @ 0% =	€0.00
Balance	€173.08 @ 10% =	<u>€17.30</u>

The pension contribution paid by Angela has no effect on her ASC liability.

Example 10

Anne holds a pensionable part-time position with an Education and Training Board (ETB). She is a member of the SPSPS. She has indicated on her ASC10 Declaration Form that this is a subsidiary employment. Her weekly pensionable salary is €150. Calculate Anne's weekly ASC liability.

Solution 10

As this is a subsidiary employment and Anne is a member of the SPSPS, the ETB should deduct ASC at the maximum rate of 3.5% as follows:

$$€150.00 @ 3.5\% = \quad €5.25$$

As Anne is a member of the SPSPS, she is deemed to be a member of the SPSPS to the exclusion of the standard accrual or fast accrual pension schemes, hence the maximum rate of 3.5%. If Anne was a member of a standard accrual pension scheme in both her main employment and subsidiary employment, the subsidiary employer should deduct a maximum rate of 10.5%

10. Calculating ASC

Payroll software should automatically calculate ASC for each employee, once:

- The pensionable elements of the individual's pay are identified, and
- The individual is assigned as a member of the appropriate pension scheme.

Tax relief is allowed on ASC at the employee's marginal rate i.e. ASC is deducted from an employee's gross pay before calculating Income tax. ASC does not qualify for employee PRSI or USC relief but qualifies in full for employer PRSI relief.

ASC can be calculated on the Cumulative or Week 1 Basis depending on individual circumstances. Public service employers should ascertain whether they are the nominated 'main employer' or a 'subsidiary employer' in respect of each employee.

All nominated main employers can apply the appropriate thresholds (as outlined above depending on the pension scheme the employee is a member of) when calculating ASC in any given pay period. Where the employee commenced on or before 1st January, the Cumulative Basis can be applied from the start of the tax year. Where the employee commenced mid-year, the Cumulative Basis can be applied from the date of commencement if the employee has no previous pensionable public service employment in the current tax year. Similar to the Cumulative Basis of tax, this would result in the employee being employed for a number of weeks or months before an ASC liability would arise. An ASC liability will not arise until the employee's year to date pensionable pay exceeds the relevant year to date ASC exemption threshold.

Where the employee has previous pensionable public service in the current year (e.g. where an employee is redeployed or transfers from one public service employer to another), the Cumulative Basis should not be applied until the employee submits an ASC45 Certificate to the new employer. The Week 1 Basis of ASC should be operated until such time as an ASC45 is submitted to the new employer. The ASC45 contains details of the employee's pensionable pay and the amount of ASC deducted to date in this tax year and should be issued to a public servant on cessation of employment.

All nominated subsidiary employers should deduct ASC at the maximum rate of either 3.5%, 7% or 10.5% from the date the employee commences employment. This is to ensure that the employee does not end up with an underpayment of ASC where they have more than one pensionable public service employment. Subsidiary employers should not deduct ASC where the earnings are not pensionable.

Due to the fact that some employees may have their ASC calculated on a Week 1/Month 1 Basis and that some individuals may hold more than one public service employment, anomalies leading to overcharges and undercharges may arise. An employee may overpay ASC during a tax year where he is absent on periods of unpaid leave (e.g. career break, term time, parental leave, unpaid maternity leave, unpaid adoptive leave, etc.) and does not receive the benefit of the ASC thresholds for these periods.

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Where the Week 1 Basis of ASC is in operation at the end of the tax year, nominated main employers should adopt a year end “balancing mechanism” which will address any underpayments or overpayments by calculating the ASC due based on the annual remuneration using the annual ASC rates and thresholds, and comparing it to ASC actually paid during the year. This should be done at, or following, the year end. Subsidiary employers are required to deduct ASC at the maximum rate with no balancing adjustment being required at the end of the year.

With regard to arrears of pay, ASC is calculated when paid at the prevailing rates at the time the payment is made regardless of when the income was earned.

Most payroll systems have an override provision for ASC which can be used to deal with cases or anomalies where it is necessary to override the system-calculated ASC. The use of this facility should allow the operator to input manual figures for the employee.

Example 11

David is employed in the public service. He earns a salary of €3,125 per month and contributes €122.37 to a standard accrual pension scheme. Calculate David's ASC liability for January and show his pay for Income tax, PRSI, USC and employer PRSI purposes.

Solution 11

Example 12

John is employed by a local authority and is a member of the SPSPS. He earns €900 per week. John's cumulative pensionable pay and ASC to week 25 is €22,500 and €196.91 respectively. In week 26 John received his salary plus €100 for overtime worked. Calculate the amount of ASC to be deducted from John in week 26 under the Cumulative Basis.

Solution 12

<i>Cumulative pensionable pay to date</i>	€22,500.00
<i>Pensionable pay this week *</i>	<u>€900.00</u>
<i>Total cumulative pay</i>	€23,400.00

Cumulative ASC liability:

<i>First Balance</i>	$\text{€}663.46 \times 26 = \text{€}17,249.96 @ 0\% =$	$\text{€}0.00$
<i>Cumulative ASC due</i>	$\text{€}6,150.04 @ 3.33\% =$	<u>$\text{€}204.79$</u>
<i>Less ASC paid to date</i>		$\text{€}204.79$
<i>ASC due this week</i>		<u>$\text{€}196.91$</u>
		$\text{€}7.88$

**As overtime is not pensionable it is not liable to ASC.*

Example 13

Adrian is employed by a public service employer and is liable to pay ASC. He earns a basic salary of €6,750 per month and contributes €358 per month to a standard accrual pension scheme. Adrian is considering taking a career break of 3 months from October to December during which time he will not receive any payment from his employer. Calculate any ASC refund which may be due to Adrian at the end of the tax year when the employer carries out a balancing adjustment.

Solution 13

	€
Pensionable pay to 30 th September	€6,750 x 9 =
	60,750.00

First	€2,875.00 x 9 =	€25,875.00 @ 0% =	0.00
Next	€2,125.00 x 9 =	€19,125.00 @ 10% =	1,912.50
Balance		€15,750.00 @ 10.5% =	<u>1,653.75</u>
Total ASC liability to 30 th September			3,566.25

Annual ASC liability

Pensionable pay	60,750.00	
First	€34,500 @ 0% =	0.00
Next	€25,500 @ 10% =	2,550.00
Balance	€750 @ 10.5% =	<u>78.75</u>
Annual ASC Liability		2,628.75
Less ASC Paid		<u>3,566.25</u>
ASC Refund Due:		937.50

Note: Some employers may process a payslip each pay period during the unpaid leave which may generate a refund of ASC (and tax and USC) if the Cumulative Basis applies. Any refund of ASC is liable to Income tax and Employer PRSI which is outlined below.

11. Dealing with Cessations

Where a public servant leaves or retires from a pensionable public service employment, the ASC thresholds to be applied in the final pay period depend on whether or not the individual intends taking up another pensionable public service employment before the end of the tax year, and whether the employee leaves with a preserved pension benefit.

11.1 Transferring to another Public Service Employer

Where the individual intends taking up another pensionable public service employment, an ASC45 Certificate should be prepared and the appropriate ASC thresholds up to that pay period should be applied to the employee's pensionable pay. The individual should submit this ASC45 Certificate to his new public service employer, where he commences the new pensionable employment in the same tax year. Generally, pension entitlements accrued in one public service standard accrual pension scheme can be transferred to another standard accrual pension scheme and the employee continues to accrue his pension entitlement in the new employment. Standard accrual pension schemes are operated independently by each public service employer. As outlined earlier in the chapter, where the individual commences a new pensionable public service employment within 26 weeks of ceasing a previous public service employment in which the individual was a member of a standard accrual pension scheme, the individual should be registered under the standard accrual pension scheme in the new employment as opposed to the SPSPS. Where more than 26 weeks have elapsed, the individual should be registered as a member of the SPSPS.

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Benefits accrued under the SPSPS from an earlier SPSPS employment are consolidated in the same single scheme. The individual does not need to arrange for a transfer of SPSPS benefits as it is the same Single Scheme in place across the public service. Benefits cannot be transferred from a standard accrual pension scheme to the SPSPS.

Consequently, there will be no refund of pension contributions to the employee and no ASC refunds will arise.

Example 14

Niall is a public servant and a member of a standard accrual public service pension scheme. He is being transferred to another public service employment on 1st September. Niall's pensionable pay from 1st January to 31st August is €34,500 and ASC of €1,150 was deducted from his wages during this period. How should this cessation be dealt with by the employer?

Solution 14

An ASC45 should be issued to Niall on cessation containing pensionable pay of €34,500 and ASC of €1,150. Niall should take the ASC45 Certificate to the new employer. No adjustments should be carried out on cessation.

11.2 Leaving Public Service with a Preserved Pension Benefit

Where a public servant leaves the public service with a preserved pension benefit and does not intend taking up another pensionable public service employment in the current tax year (e.g. resignation, retirement, career break, etc.), the employer should carry out a balancing adjustment in the final pay period. The employer should apply the appropriate annual ASC thresholds to the cumulative pensionable pay in the final pay period, which may result in the employee being entitled to a refund of all or part of the ASC deducted in the current year. Public service employers should seek a declaration from the employee declaring he does not intend taking up another public service employment during the remainder of the tax year. An ASC12 Form (Application for Refund) is available for this purpose, which can be used by public service employers. Where this adjustment was not carried out during the tax year, an employee can request his nominated main employer to carry out a review of his ASC liability following the end of the tax year.

Example 15

Robert has been employed as a public servant for 10 years and is a member of a standard accrual pension scheme. He is leaving his employment on 31st August with a preserved public service pension entitlement. Robert's pensionable pay from 1st January to 31st August is €34,500 and ASC of €1,150 was deducted from his wages during this period. Robert has no intention of working in the public service during the remainder of this tax year and has enquired if he is due any ASC refund for the current year.

Solution 15

ASC liability for the year:

Pensionable pay	8 months to 31 st August =	€34,500
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Annual ASC liability:	First	€34,500 @ 0% =	€0.00
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Less ASC deducted to date in the current year			€1,150
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ASC Refund Due:			€1,150
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This ASC refund should be processed by the employer on cessation. The pensionable pay and ASC should be recorded as €34,500 and €0.00 respectively on the ASC45 Certificate. This

balancing adjustment should only be carried out on cessation where a signed ASC12 declaration is received from the employee.

11.3 Leaving the Public Service with no Pension Benefits

Where an employee ceases to be a public servant without attaining 2 years' membership of a public service pension scheme, **and**:

- Doesn't transfer to another public service employment, **and**
- Doesn't retain any preserved pension benefits from that public service pension, **and**
- Hasn't received any payment in lieu of a public service pension,

that person is due a refund of any ASC deducted including ASC deducted in a previous tax year.

A public servant retains a preserved pension benefit where he has been a member of the pension scheme for 2 years (24 months).

While standard accrual (or fast accrual) schemes are operated independently by each public service employer, the SPSPS is a single scheme which applies across the public sector. All periods of SPSPS membership must be included, including periods of membership with other public service bodies when determining if an employee retains a preserved benefit (i.e. has more than 24 months membership). For example, if an employee leaves his current public service employment with 6 months membership of the SPSPS but has been a member of the SPSPS for 3 years with a previous public service employer, as the employee's membership of the SPSPS exceeds 24 months, a full refund of ASC should not be made on cessation of this employment. However, the employee may be entitled to have a balancing adjustment carried out to his ASC for the current year on cessation (as outlined in section 11.2 above) where he does not intend taking up another pensionable public service employment for the remainder of that year.

The refund of ASC is in addition to any refund of pension contributions which may be due to that person. While refunds of pension contributions are not subject to Income tax, PRSI and USC under the PAYE system (refunds of pension contributions are subject to a 20% withholding tax which should be paid directly to Revenue by the pension administrator), a refund of ASC is liable to Income tax and Employer PRSI through payroll in the pay period in which it is refunded. Neither USC nor employee PRSI applies to an ASC refund.

Example 16

Simon was employed in the public service on an 18 month fixed-term contract, commencing on 1st September 2021 and ceasing on 28th February 2023. He was a member of the SPSPS and was not previously employed in the public service. Simon will receive a refund of his pension contribution less 20% withholding tax.

Simon's pensionable pay from 1st September to 31st December 2021 was €36,000 and ASC of €49.95 was deducted.

His pensionable pay for 2022 was €108,000 and ASC of €2,529.15 was deducted from his wages.

Simon's pensionable pay from 1st January to 28th February 2023 was €18,000 and ASC of €421.52 was deducted. Simon has enquired if he is due any refund of ASC.

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Solution 16

Refund of ASC deducted in 2021	€49.95
Refund of ASC deducted in 2022	€2,529.15
Refund of ASC deducted in 2023	<u>€421.52</u>
Total Refund	€3,000.62

Treatment of Refund:

The refund should be paid to Simon in 2023 on cessation and is liable to Income tax and Employer PRSI only.

Simon should be issued with an ASC45 Certificate on cessation with pensionable pay of €18,000 and a nil ASC liability. He should also be issued with:

- An amended ASC60 Certificate for 2021 to record €36,000 pensionable pay and nil ASC liability, and
- An amended ASC60 Certificate for 2022 to record €108,000 pensionable pay and nil ASC liability.

12. ASC Certificates and Forms

12.1 ASC45

Each public service employer is obliged to issue an ASC45 (*see copy at the end of this chapter*) to each public servant on cessation of employment which should contain the following information:

- Employee name, address, PPSN and Payroll/Works Number,
- The commencement date for ASC in this employment and the date of cessation,
- The amount of the employee's gross pensionable income for ASC purposes for this employment in this year and the corresponding amount of ASC deducted in this employment,
- The amount of the employee's gross pensionable income for ASC purposes for any previous employment in this year and the corresponding amount of ASC deducted in that previous employment,
- Employer name, address, employer registered number and contact details.

Where a public servant takes up a new public service employment during the same tax year, he should submit the ASC45 to his new employer. Otherwise it should be retained for his records and for seeking an ASC refund, if due.

A new ASC45 Certificate should be issued to an employee who has two or more periods of employment with the same public service employer in an income tax year. The figures for the latest period of employment should be entered in "this employment" section and all previous periods of employment should be recorded under the "previous employment" section.

The ASC45 should be issued even where a refund of ASC has been made and the ASC45 contains a nil ASC amount.

Where a public servant takes up a new public service employment during the same tax year, he should submit the ASC45 to his new employer. Otherwise it should be retained for his records and for seeking an ASC refund, if due.

An employer should insert the letter ‘M’ or ‘S’ on the ASC45 Certificate to indicate whether it was issued by a main or subsidiary employer.

12.2 ASC45 Supplementary

Each public service employer is obliged to issue an ASC45 Supplementary (*see copy at the end of this chapter*) to a former employee who receives a post-cessation pensionable payment which should contain the following information:

- Employee name, address, PPSN and Payroll/Works Number,
- The commencement date for ASC in this employment and the date of cessation,
- The amount of the additional gross pensionable income subject to ASC paid since 1st January which was not included on the original ASC45 and the corresponding amount of ASC deducted from this additional gross pensionable income,
- Where all or part of the ASC included in the ASC45 Supplementary refers to a previous tax year, the amount should be broken down per year.
- Employer name, address, employer registered number and contact details.

Where the public servant takes up a new public service employment during the same tax year, he should submit the ASC45 Supplementary to his new employer. Otherwise it should be retained for his records and for seeking an ASC refund, if due.

Where the employer is aware that the employee has taken up another public service employment within that same tax year (i.e. the employee did not complete an ACS12 Form (see below) on cessation), it would be cautious for the employer to consider themselves a subsidiary employer and calculate ASC at the maximum rate on the supplementary payment depending on which pension scheme the employee was a member of.

Where the employer is aware that the employee has not taken up another public service employment within that same tax year (e.g. where an employee completed an ASC12 Form (see below) on cessation), ASC should be calculated on the supplementary payment using the ASC rates and annual thresholds applicable to that employee depending on which pension scheme the employee was a member of.

12.3 ASC60

Each public service employer is obliged to issue an ASC60 Certificate (*see copy at the end of this chapter*) to each employee who is employed by them on the last day of the tax year. Where an ASC60 is issued at the end of the tax year it should show:

- Employee name, address and PPSN,
- The amount of the person’s gross pensionable income from that employment and for any previous employment for the current tax year,
- The amount of ASC deducted in that employment and any previous employment in the current year,
- If the employee commenced employment in the current year, the date of commencement,
- Employer name, address, employer registered number and contact details.

The ASC60 Certificate should be issued even where the employee had a nil ASC liability for the tax year. If the public service employer carried out a year-end review of an employee’s annual

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ASC liability, the revised ASC liability should be stated on the ASC60. If the employer issues electronic payslips it should also be possible to issue electronic ASC60s.

A public service employer should insert the letter ‘M’ or ‘S’ on the ASC60 as appropriate to indicate whether it was issued by the main employer or subsidiary employer.

12.4 ASC12 – Application for Refund

Where a public servant leaves his public service employment mid-year and has no intention of taking up another public service employment before the end of the tax year, he should be asked to sign a declaration stating this intention in order to obtain a refund. An ASC12 Form – Application for Refund (*see copy at the end of this chapter*) is available for this purpose. Once completed, this allows the nominated main employer to allocate the annual ASC thresholds to the employee’s pensionable earnings up to the date of leaving. In signing the form, the employee should be aware that if he takes up another public service employment before the end of the tax year, he may have an underpayment of ASC.

13. End of Year Review

Where requested by an employee, the nominated main employer should carry out a review of the individual’s annual ASC liability from all public service employments within 30 days of such a request. This is achieved by collating the ASC60M together with any ASC60S, calculating the total amount of ASC due using the annual ASC thresholds based on the total public service pensionable income and comparing this with ASC deducted from all public service employments.

Where the end of year review results in an overpayment of ASC, the main employer must refund the amount of the overpayment to the employee and subject the refund to Income tax and Employer PRSI through payroll in the period the refund is made. Should an underpayment arise, the employer is obliged to recoup the underpayment from the employees concerned in a just and reasonable manner. Refunds and recoupments made following the end of year review should be recorded on the payroll in the new tax year but should not be included as part of the ASC liability for the new tax year.

Where a Week 53 or Fortnight 27 arises, an additional weekly or fortnightly ASC threshold should be allocated to the employee on a week 1/fortnight 1 basis.

Following an end of year review, the main employer should issue an ASC60 Amended Certificate (*see copy at the end of this chapter*) to the employee concerned containing his total pensionable remuneration from all public service employments held during the year and the final amount of ASC. An ASC60 Amended Certificate takes precedence over any other ASC60.

14. ASC Records and Reporting

Public service employers are required to keep full records of ASC deducted from all employees during a tax year. Records as produced by payroll software will generally satisfy this requirement. The information will be similar to the details on an ASC45 or ASC60.

Where an employer is required to pay over ASC to another public service body each month, the total amount of ASC deducted and the number of employees to whom it relates should be recorded on an ASC30 Summary Report.

ASC should not be paid into a pension fund. It must be remitted for the benefit of the Exchequer. Any public service body forming part of the Civil Service must bring any ASC deductions to account within 14 days of the end of the month of collection.

Public service employers will also have to produce an annual report each year giving a breakdown of gross pensionable pay and ASC for each employee. This report, which is referred to as an ASC35 report should contain the following information:

- Employee name, address and PPSN
- Payroll/works number
- Date of Birth
- Commencement and cessation dates
- Total pensionable pay for that employment
- Office or position
- Total amount of ASC deducted

All records relating to ASC deducted must be retained by public service employers for the lifetime of the employees and his or her spouse/civil partner and dependent children.

Public service bodies who receive a grant or any other payment out of money provided directly or indirectly by the Oireachtas or out of the Central Fund are obliged, during the year, to estimate the total amount of ASC deductions that will be made in the following year. The estimate should be based on the actual number of employees and their estimated remuneration in the tax year. Once the estimate is calculated, each public service body must notify the Minister responsible in writing of the amount and the basis of calculation. Any grant or budget allocation will then be reduced by the amount of the ASC estimate.

15. ASC and Employee Pension Tax Relief Limits

Whilst ASC qualifies for Income tax and employer PRSI relief, it is not regarded as a pension contribution. This means that where the tax relief on an employee's contributions to an occupational pension, PRSA, AVC or RAC (Retirement Annuity Contract) is being calculated, no account is to be taken of the employee's ASC. An employee can obtain tax relief on pension contributions subject to the age related exemption limits as shown in the chapter entitled "Pensions & PRSAs".

16. Previous Service Recognised for Pension Purposes

Where an employee, who was previously given a refund of pension contributions and a refund of ASC, is subsequently re-employed in the public service and wishes to have the service for which the ASC refund was made, now considered for pension purposes, the employee will have to repay the ASC refund, plus compound interest, to the public service body that issued the original refund. In this instance, both the ASC repayment and the compound interest will be treated as ASC (i.e. it would qualify for Income tax relief and employer PRSI relief).

17. Payment in lieu of Membership of a Public Service Pension Scheme

Certain public service employees are entitled to receive a payment in lieu of membership of a pension scheme. As mentioned earlier, this includes ministerial appointments and special advisers to the ministers and the maximum payment they should receive is 11% of their remuneration. When such employees leave their public service employment, they retain this payment and as such are not entitled to a full refund of ASC. However, they are entitled to have a balancing

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adjustment carried out at the date of leaving by applying the annual thresholds against the year to date income at the date of leaving, assuming they do not intend taking up another public service employment prior to the end of the tax year.

Certain Public Service employees are entitled to receive a payment on retirement in lieu of a public service pension entitlement. If so, they are liable for ASC in light of their entitlement to a payment in lieu of the pension entitlement.

18. Payslips

Employers are obliged under the **Payment of Wages Act 1991** to show the nature and amount of any deduction from the employee's wages on the employee's payslip. Details of ASC deductions should be displayed on an employee's payslip as a separate entry. ASC should be deducted from the employee's pensionable pay before the calculation of income tax.

If the payslip shows pension contributions (which can be a combination of superannuation and AVCs) on the Cumulative/YTD (year to date) section of the payslip, then ASC should be included in this area of the payslip also. ASC should not be recorded as a pension contribution.

ASC10 Employment Declaration Form

ASC10

Additional Superannuation Contribution
Employment Declaration Form



To be completed by an employee on commencement of employment in a Public Service body

With effect from 1 January 2019, all employees are required to declare their overall personal public service pension status with regard to any public service pension scheme or pension arrangement¹. The following details are required to be completed and returned immediately to the payroll department.

MAIN EMPLOYMENT

a. Is THIS employment your MAIN² public service employment?

YES NO

i. Are you a member of a public service pension scheme in respect of THIS employment?

YES NO

ii. If no, do you receive a payment in lieu of pension in respect of THIS employment?

YES NO

iii. If no, have you an entitlement to a retirement gratuity in respect of THIS employment?

YES NO

iv. If no, do you have any other pension arrangement in respect of this employment?

YES NO

If yes, please give further details:

b. Do you have any other employment in the Public Service?

YES NO

If yes, please provide details of subsidiary employments overleaf or on additional sheets as required

I certify the foregoing information to be correct to the best of my knowledge and belief, and I undertake to notify the Payroll Department at _____, immediately of any change affecting the details given above/overleaf. I understand that if I am a member of a Public Service pension scheme, receive a payment-in-lieu of pension, am entitled to a retirement gratuity, or have any other pension arrangement that I am liable for the additional superannuation contribution at the appropriate rate.

Signature: _____ Date: _____ DD MM YY YY YY

NAME [in block capitals]: _____ PPS: _____

Employer: _____ Payroll/Works Number: _____

IMPORTANT NOTE: The above information is required in order to process your payroll. Failure to complete this form correctly may result in non-payment of wages/salary and/or an underpayment of ASC.

- ¹ Note: A pension arrangement as certified by the Minister may include membership of a public service pension scheme, payment-in-lieu of pension, a retirement gratuity payable on retirement or any other such pension arrangement;
- ² Note: A MAIN employment shall be the main public service employment as nominated by the individual for the purposes of the additional superannuation contribution;

PLEASE COMPLETE THIS CERTIFICATE IN BLOCK CAPITALS

CHAPTER 13

Additional Superannuation Contribution - Employment Declaration Form																									
SUBSIDIARY EMPLOYMENTS																									
Name [in block capitals]:					PPS No.																				
SUBSIDIARY EMPLOYMENT # 1																									
Employer:					Employer Registered Number:																				
i. Are you a member of a public service pension scheme in respect of this subsidiary employment?					<table border="1"><tr><td>YES</td><td></td><td>NO</td><td></td></tr><tr><td>YES</td><td></td><td>NO</td><td></td></tr><tr><td>YES</td><td></td><td>NO</td><td></td></tr><tr><td>YES</td><td></td><td>NO</td><td></td></tr></table>					YES		NO													
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ii. If no, do you receive a payment in lieu of pension in respect of this subsidiary employment?					<table border="1"><tr><td>YES</td><td></td><td>NO</td><td></td></tr><tr><td>YES</td><td></td><td>NO</td><td></td></tr><tr><td>YES</td><td></td><td>NO</td><td></td></tr><tr><td>YES</td><td></td><td>NO</td><td></td></tr></table>					YES		NO													
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iii. If no, have you an entitlement to a retirement gratuity in respect of this subsidiary employment?					<table border="1"><tr><td>YES</td><td></td><td>NO</td><td></td></tr><tr><td>YES</td><td></td><td>NO</td><td></td></tr><tr><td>YES</td><td></td><td>NO</td><td></td></tr><tr><td>YES</td><td></td><td>NO</td><td></td></tr></table>					YES		NO													
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iv. If no, do you have any other pension arrangement in respect of this subsidiary employment?					<table border="1"><tr><td>YES</td><td></td><td>NO</td><td></td></tr><tr><td>YES</td><td></td><td>NO</td><td></td></tr><tr><td>YES</td><td></td><td>NO</td><td></td></tr><tr><td>YES</td><td></td><td>NO</td><td></td></tr></table>					YES		NO													
YES		NO																							
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YES		NO																							
YES		NO																							
If yes, please give further details:																									
SUBSIDIARY EMPLOYMENT # 2																									
Employer:					Employer Registered Number:																				
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Additional Superannuation Contribution

ASC45 Certificate

ASC45 <input type="text"/> Additional Superannuation Contribution – Certificate <i>(This is not an end-year Balancing Statement)</i>																																																																																																		
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<p>Employer: This certificate is to be given to the employee when they have cease employment.</p> <p>Employee: This is a certificate of the Additional Superannuation Contribution made in previous employments and in this employment in this current year to date of cessation. Please retain carefully, and provide to any subsequent public service employer in the same year.</p>																																																																																																		
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CHAPTER 13

ASC45 Supplementary

ASC45 supplementary										
Particulars of payments and ASC deductions made in respect of pensionable remuneration paid to a former employee since date of leaving which were not included on the original ASC45										
Additional Superannuation Contribution – Certificate										
(This is not an end-year Balancing Statement)										
Employee Details										
Surname of Employee <input type="text"/>	Commencement Date for Additional Superannuation Contribution <table border="1"><tr><td>D</td><td>D</td><td>M</td><td>M</td><td>Y</td><td>Y</td><td>Y</td><td>Y</td><td>Y</td></tr></table>	D	D	M	M	Y	Y	Y	Y	Y
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Address <input type="text"/>	Payroll/Works Number <input type="text"/>									
	PPS Number <input type="text"/>									
Additional Superannuation Contribution Details										
Below are the details of the Additional Superannuation Contribution made since 1 January which were not included on Form ASC45 previously issued										
Gross Additional Pensionable Income subject to Additional Superannuation Contribution not included on ASC45 previously issued € <input type="text"/> (include cent)	Amount of Additional Superannuation Contribution made in respect of the additional gross pensionable income € <input type="text"/> (include cent)									
Where all or part of the Supplementary ASC referred to herein relates to previous year(s), please give a breakdown by year										
Year 1 <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	€ <input type="text"/> (include cent)									
Year 2 <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	€ <input type="text"/> (include cent)									
Employer Details										
I certify that the particulars entered above are correct.										
Employer <input type="text"/>	Employer Registered Number <input type="text"/>									
Address <input type="text"/>	Phone Number <input type="text"/>									
Signature/Stamp of Paymaster <input type="text"/>	Email <input type="text"/>									
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D	D	M	M	Y	Y	Y	Y			
Employer: This certificate is to be given to the employee.										
Employee: This is a certificate of the Additional Superannuation Contribution in respect of additional gross pensionable income paid since date of cessation of this employment. Please retain carefully, and provide to any subsequent public service employer in the same year.										
PLEASE PRINT THIS CERTIFICATE OR COMPLETE IN BLOCK CAPITALS										

Additional Superannuation Contribution

ASC60 Certificate

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Where an employee had more than one period of employment with the same employer in the year, please insert the gross pensionable income and Additional Superannuation Contribution figures for the latest period of employment <u>only</u> in the second column.</i>												Employer Details												<i>I certify that the particulars entered above are correct.</i>												Employer 						Employer Registered Number 						Address 						Phone Number 						Signature/Stamp of Paymaster 						Email 												Date 						Employer: This certificate is to be given to the employee. Employee: This is a certificate of the Additional Superannuation Contribution made in previous employments and in this employment in this current year to the end of the year. Please retain carefully.												PLEASE PRINT THIS CERTIFICATE OR COMPLETE IN BLOCK CAPITALS											
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CHAPTER 13

ASC60 Amended Certificate

ASC60 amended []		
Additional Superannuation Contribution – Certificate <i>Amended End-of-Year Balancing Statement</i>		
Employee Details		
Surname of Employee []		Commencement Date for Additional Superannuation Contribution [D D M M Y Y Y Y]
First Name []		
Address []		Payroll/Works Number []
		PPS Number []
Additional Superannuation Contribution Details		
<i>Below are the details of the Additional Superannuation Contribution made in previous employments and in this employment during the year as amended</i>		
Gross Pensionable Income for Additional Superannuation Contribution for Previous Employments in this year € [] (include cent)		Gross Pensionable Income for Additional Superannuation Contribution for <u>THIS</u> Employment in this year € [] (include cent)
Amount of Additional Superannuation Contribution made for previous employments in this year € [] (include cent)		Amount of Additional Superannuation Contribution made for <u>THIS</u> employment € [] (include cent)
<i>Please insert total of all gross pensionable incomes and Additional Superannuation Contribution made in all previous employments in this year in the first column. Where an employee had more than one period of employment with the same employer in the year, please insert the gross pensionable income and Additional Superannuation Contribution figures for the latest period of employment <u>only</u> in the second column.</i>		
Employer Details		
I certify that the particulars entered above are correct.		
Employer []		Employer Registered Number []
Address []		Phone Number []
Signature/Stamp of Paymaster []		Email []
		Date [D D M M Y Y Y Y]
Employer: This certificate is to be given to the employee.		
Employee: This is a certificate of the Additional Superannuation Contribution made in previous employments and in this employment in this current year to the end of the year. Please retain carefully.		
PLEASE PRINT THIS CERTIFICATE OR COMPLETE IN BLOCK CAPITALS		

Additional Superannuation Contribution

ASC12 Form

ASC12	Additional Superannuation Contribution Application for Refund	
<p>To be completed in respect of a person who is seeking a refund of ASC.</p> <p>I. Ceased employment* and requesting a balancing mechanism to be carried out mid year. YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>II. Ceased employment* during the year and is requesting a balancing mechanism to be carried out at the end of the year. YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>III. Ceased employment* in a previous year, requesting a balancing mechanism to be carried out in respect of the relevant year. YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>IV. Ceased employment* with no current or future entitlement to a Public Service pension, did not receive a payment in lieu of pension and/or is not entitled to a gratuity at a later stage, in respect of this employment and is requesting a full refund of ASC. YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>V. Ceased employment* in a previous year, has received additional pension remuneration in respect of that employment. Requesting balancing mechanism be carried out in respect to the additional payments. YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>I declare that I do not intend to/did not take up further Public Service employment in the relevant year, following cessation of the employment referred to above. I also declare that I am not currently employed elsewhere in the Public Service in a pensionable position. On that basis I request that an annual balancing mechanism be carried out on my Public Service pensionable remuneration to date. I confirm that I have provided details of all my Public Service remuneration to date to my relevant employer _____.</p> <p>I acknowledge that, in calculating my ABC liability to date, I have been allowed the full set of annual thresholds in the current/relevant year. I also acknowledge that, should I take up further Public Service pensionable employment in the current year, that I may have an underpayment of ABC as a result of being allowed the full set of annual thresholds. I acknowledge that I will be required to make good any underpayment which arises on re-employment. In respect to IV. above I acknowledge, should I be eligible to and wish to restore pension entitlement, I will be required to repay any refund of ABC with compound interest.</p> <p>I certify the foregoing information to be correct, and I undertake to notify the Payroll Department at _____, immediately of any change affecting the details given above.</p> <p>Signature: _____ Date: DD MM YYYY</p> <p>NAME [in block capitals]: _____ PPS: _____/_____/_____/_____/_____/_____/</p> <p>Employer: _____ Payroll/Works Number: _____/_____/_____/_____/_____/_____/</p> <p style="text-align: center; font-weight: bold; margin-top: 10px;">PLEASE COMPLETE THIS DECLARATION IN BLOCK CAPITALS COPY TO BE RETAINED BY THE EMPLOYER</p> <p style="text-align: center; margin-top: 10px;">*Ceased employment includes Retired, Resigned, End of contract or took a Career Break</p>		

CHAPTER 14

Attachment of Earnings Order and Notice of Attachment

- 1. Introduction**
 - 2. Attachment of Earnings for Maintenance Payments**
 - 3. Attachment of Earnings for Recovery of Fines**
 - 4. Notice of Attachment**
-

1. Introduction

An Attachment of Earnings Order (AEO) or a Notice of Attachment (NOA) received by an employer on behalf of an employee places a legal obligation on an employer to make a deduction from an employee's salary or pension at source and pay it over to the relevant authority. An AEO can be issued by a Court to collect maintenance payments in a situation where there has been a separation or divorce and one spouse or partner has not provided sufficient financial support for the family for which he or she is responsible. An AEO may also be issued by a court to recover unpaid fines (e.g. a speeding fine). An NOA may be issued by the Department of Social Protection (DSP) to recover an overpayment or by Revenue to recover unpaid tax.

This chapter deals mainly with AEOs for maintenance payments issued by a Court and how they are processed through payroll. AEOs for the recovery of a fine and NOAs are covered towards the end of this chapter.

2. Attachment of Earnings for Maintenance Payments

Where an informal maintenance agreement cannot be reached, either party can apply to the court for a maintenance order. Once granted, a maintenance order obliges one party to pay maintenance to a former spouse or a dependent child, or both. Maintenance payments are often made by an individual outside of payroll.

Where the person responsible for paying maintenance (maintenance debtor) fails to comply with the maintenance order and does not pay the amount awarded, the other party (maintenance creditor) can seek an AEO from the Court if the maintenance debtor is in employment or in receipt of a pension.¹ An AEO is a legal instruction to the employer or pension provider of a maintenance debtor to make deductions from his wages and pay them over to the Court Clerk. The AEO must specify two rates:

- The normal deduction rate: this is the amount of earnings which the court considers is reasonable to meet the payments due under the order in future, unpaid arrears and any legal costs or expenses due.
- The protected earnings rate: this is the amount below which the court considers that the earnings of the maintenance debtor should not be reduced.

¹ Family Law (Maintenance of Spouses and Children) Act 1976, Part III

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If, an employer deducts the normal deduction rate and this results in the employee/maintenance debtor receiving less than the protected earnings rate, the employer may only deduct an amount by which the employee's earnings exceed the protected earnings rate.

There are similar entitlements for civil partners and qualifying cohabitants (subject to certain conditions).² However, while we will continue to use the term "marriage" and "spouse" in this chapter they may be read as "civil partnership", and "civil partner" and "qualifying cohabitants". A "qualifying cohabitant" is defined as a person who has been cohabiting with another person for a period of 5 years or more, or for a reduced period of 2 years where they are parents of dependent children.

2.1 Maintenance Debtor's Earnings

Only a maintenance debtor's 'earnings' as defined in legislation can be attached.³ For this purpose, earnings has a broad definition and includes any monies paid to an individual by way of wages or salary, including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary. An employer, maintenance creditor or maintenance debtor may apply to the court for a determination whether payments to the maintenance debtor are earnings as defined in the legislation.

2.2 Employer's Responsibility

An employer to whom an AEO is directed must make such periodic deductions from the employee/maintenance debtor's earnings as specified in the AEO and pay them over to the Court clerk. Occasionally, the Court may direct that the amount is paid directly to the recipient/maintenance creditor. When a deduction is made, the employer must give the employee/maintenance debtor a written statement of the total amount deducted. The recording of the deduction on the employee's payslip would generally satisfy this requirement.

Failure on the part of an employer to carry out the instructions contained in an AEO could result in criminal proceedings being taken against the employer, as such action or lack of action would constitute a criminal offence.

The processing of such orders may create an additional administrative duty for payroll staff, the cost of which must be borne by the employer, as there is no provision for charging an administration fee.

The employer must carry out the following steps at each pay period, in respect of an employee where an AEO has been received:

- Deduct the normal deduction rate from the employee's net take home pay (not gross pay), after statutory deductions. USC relief may be granted through payroll in some instances – see section 2.5 below).
- Ensure that any arrears which have been deducted do not exceed the specified number of weeks or months.
- Ensure that the net take home pay, after statutory deductions and deduction of the normal deduction rate, is equal to or greater than the protected earnings specified in the AEO.

² Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

³ Family Law (Maintenance of Spouses and Children) Act 1976, Section 3

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- Where the net take home pay is below the protected earnings threshold specified in the order, an adjustment must be made to the AEO, to ensure that the employee receives the protected earnings.
- Pay the employee.
- Send the normal deduction rate (or adjusted amount) to the Court clerk (or the maintenance creditor, as appropriate).
- Keep a record of all payments.

When an employer receives an AEO he must immediately comply with it, although the employer cannot be penalised for non-compliance unless 10 days have expired since the date of receipt of the AEO. Where two or more AEOs are received in respect of the same individual, the employer must ensure that the latest order is being complied with.

If an AEO is received by an employer and the maintenance debtor is not in his employment, that employer must notify the Court clerk within 10 days of receipt of the AEO. Likewise, following receipt of the AEO, if the employee/maintenance debtor ceases employment, the employer must inform the Court clerk within 10 days of the employee/maintenance debtor's departure.

Where a maintenance debtor ceases employment, or becomes employed or re-employed, the maintenance debtor must notify the Court in writing within 10 days. The notification must include the details of his earnings or expected earnings in the new employment. Where an employer of a maintenance debtor becomes aware that an order is in place, he must notify the court clerk within 10 days of the commencement of this employment or from the date he becomes aware, whichever is the later. This notification must include the new employer's details and details of the expected earnings of the employee.

2.3 Notification to the Employer

An AEO issued to an employer will specify the following information:

- Name of the Court issuing the order
- Date of the order
- Name and address of the creditor, i.e. the recipient
- Name of the debtor, i.e. the employee
- Debtor's (employee's) PPSN
- Name of the employer to whom the order is addressed
- Person to whom the payment has to be made
- Normal amount to be deducted and paid over each pay period
- Amount to be deducted and paid over in respect of arrears each pay period. This is for a specified number of payments
- Amount of protected earnings, i.e. the minimum amount of net pay to which the employee is entitled after statutory deductions and the normal deduction rate (or adjusted amount).

2.4 Cessation of an AEO

An AEO ceases to have effect upon the subsequent making of an order to that effect. It also ceases to have effect upon the discharge of the maintenance order.

2.5 Income Tax, PRSI & USC Implications

AEOs for maintenance payment should be deducted from an employee's net take home pay. Legally enforceable maintenance payments paid by a maintenance debtor on behalf of an ex-

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spouse are deductible for income tax, USC and PRSI purposes. Revenue may grant tax relief during the tax year by increasing the SRCOP of the maintenance debtor by the amount of the maintenance payment and by increasing his tax credits by 20% of the amount of the maintenance payment.

If tax relief is not claimed during the tax year, a tax refund can be claimed following the end of the tax year from Revenue who will reduce an individual's taxable earnings by an amount equal to the maintenance payments. Refunds of PRSI can be claimed following the end of the tax year from the PRSI Refunds Section of the DSP: <https://www.gov.ie/en/service/5706e5-prsi-refunds/>

Strictly speaking, any USC relief due to the maintenance debtor should be claimed at the end of the tax year. However, if an individual wishes to claim USC relief during the tax year, he should contact Revenue and advise them of the amounts involved. Revenue will then issue a letter to the employer advising him of an amount of income to be disregarded when calculating USC. If it proves difficult for the employer to grant USC relief in this manner, he should discuss the matter with the employee and ask him to claim USC relief directly from Revenue following the end of the tax year.

Maintenance which is payable on behalf of a dependent child, whether under a legally enforceable agreement or not, is not an allowable deduction before calculating the tax, USC or PRSI.

Example 1

John O'Neill is employed and earns €775 per week. His weekly tax credits and SRCOP are €68.27 and €769.24 respectively and he is entitled to the standard USC COPs. John's employer has just received an AEO from the District Court. The order states that the amount of earnings attached under the order for his ex-spouse is €125 per week and the protected earnings figure is €415. Revenue has advised John's employer to allow USC relief on €125 through the payroll.

Calculate John's net take home pay for week 1 to include all deductions.

Solution 1

Gross Pay		€775.00
SRCP		€769.24
Gross Tax	€769.24 @ 20% =	€153.84
	€5.76 @ 40% =	<u>€2.30</u>
		€156.14
<i>Less Tax Credits</i>		<u>€68.27</u>
<i>Income Tax Liability</i>		€87.87
EE PRSI	€775 @ 4% =	€31.00
Gross pay for USC	(€775 - €125*) =	€650.00
USC at Rate 1	€231.00 @ 0.5% =	€1.15
USC at Rate 2	€209.77 @ 2% =	€4.19
USC at Rate 3	€209.23 @ 4.5% =	<u>€9.41</u>
		€14.75

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Net Take Home Pay:

Gross Pay	€775.00
Less: Income Tax	€87.87
PRSI	€31.00
USC	€14.75
AEO	<u>€125.00</u>
Pay after statutory deductions and AEO	€516.38
 Protected earnings	€415.00

**Note: Gross pay for USC purposes was reduced as per Revenue instruction.*

There is no adjustment required to this calculation as the net take home pay exceeds the protected earnings as per the AEO.

2.6 Attachment of Earnings and Local Property Tax

Where an AEO is already in place for an employee and his employer subsequently receives a Revenue Payroll Notification (RPN) from Revenue instructing him to deduct LPT, the AEO will take priority over the LPT. However if the RPN indicating a deduction for LPT is received before the AEO then the LPT will take priority over the AEO. If they are both received on the same day then the AEO will take priority over the LPT.

2.7 Protected Earnings

Where an AEO specifies a protected earnings figure has to be adjusted, so as to allow the protected earnings figure to be paid to the employee. No account is taken of voluntary deductions (e.g. social club, savings scheme, etc.), pension contributions or approved salary sacrifices (e.g. travel pass) when calculating the protected earnings figure. However, approved salary sacrifices are allowable in calculating Income Tax, PRSI and USC, while pension contributions are also allowable in calculating Income Tax, etc.), pension contributions or approved salary sacrifices (e.g. travel pass) when calculating the protected earnings figure. However, approved salary sacrifices are allowable in calculating Income Tax, PRSI and USC, while pension contributions are also allowable in calculating Income Tax.

Example 2

Ray Bennett is employed and earns €835 per week. His weekly tax credits and SRCOP are €68.27 and €769.24 respectively. He is entitled to the standard weekly USC COPs. He pays €25 per week into a company savings scheme and €50 per week into the company pension scheme. His employer has received an AEO from the District Court. The AEO states that the normal deduction rate is €220 per week and the protected earnings is €480 per week. The employer has not received any USC instruction from Revenue.

Calculate Ray's net pay for the purposes of the AEO, and his actual net take home pay for a normal week, assuming he is subject to tax and USC on the Week 1 Basis.

Solution 2

Gross Pay (for PRSI and USC purposes)	€835.00
Less pension contribution	<u>€50.00</u>
Taxable pay	€785.00
 SRCOP	€769.24

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<i>Gross tax</i>	$\text{€}769.24 @ 20\% =$	$\text{€}153.84$
	$\text{€}15.76 @ 40\% =$	$\underline{\text{€}6.30}$
		$\text{€}160.14$
<i>Less Tax Credits</i>		$\underline{\text{€}68.27}$
<i>Income Tax liability</i>		$\text{€}91.87$
 <i>EE PRSI</i>	 $\text{€}835 @ 4\% =$	 $\text{€}33.40$
<i>USC @ Rate 1</i>	$\text{€}231.00 @ 0.5\% =$	$\text{€}1.15$
<i>USC @ Rate 2</i>	$\text{€}209.77 @ 2\% =$	$\text{€}4.19$
<i>Balance at Rate 3</i>	$\text{€}394.23 @ 4.5\% =$	$\underline{\text{€}17.74}$
		$\text{€}23.08$
 <i>Net Pay for purpose of the AEO:</i>		
<i>Gross Pay</i>		$\text{€}835.00$
<i>Less:</i>	<i>Income Tax</i>	$\text{€}91.87$
	<i>PRSI</i>	$\text{€}33.40$
	<i>USC</i>	$\text{€}23.08$
	<i>AO</i>	$\underline{\text{€}220.00}$
		$\text{€}368.35$
<i>Pay after statutory deductions and attachment of earnings</i>		$\text{€}466.65$
 <i>Protected earnings</i>		 $\text{€}480.00$

An adjustment is required to this calculation, as the net take home pay is below the protected earnings figure of €480 per week.

<i>Protected earnings</i>		$\text{€}480.00$
<i>Pay after statutory deductions and AEO</i>		$\underline{\text{€}466.65}$
<i>Adjustment to AEO</i>		$\text{€}13.35$
<i>Revised AEO</i>	$(\text{€}220.00 - \text{€}13.35) =$	$\text{€}206.65$

Revised pay after statutory deductions and adjusted AEO:

<i>Gross pay</i>		$\text{€}835.00$
<i>Less:</i>	<i>Income Tax</i>	$\text{€}91.87$
	<i>PRSI</i>	$\text{€}33.40$
	<i>USC</i>	$\text{€}23.08$
	<i>Revised AEO</i>	$\underline{\text{€}206.65}$
<i>Net take home pay (protected earnings)</i>		$\text{€}480.00$

When calculating Ray's net take home pay for the purpose of the AEO there is no account taken of the fact that he pays €50 into a company pension scheme or €25 into the company savings scheme, as only statutory deductions are taken into account in calculating the protected earnings figure. However, pension contributions and contributions to a PHI are taken into account when calculating the amount of Income tax payable.

It can be seen that the deduction in respect of the AEO was reduced so that his net take home pay (the protected earnings figure) was increased to €480 per week.

However, Ray's actual net take home pay is the amount left over after making the statutory deductions as outlined above, and the non-statutory deductions which are included in the calculation below:

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Actual Net Take Home Pay:

<i>Gross Pay</i>		<i>€835.00</i>
<i>Less:</i>		
<i>Income Tax</i>	<i>€91.87</i>	
<i>PRSI</i>	<i>€33.40</i>	
<i>USC</i>	<i>€23.08</i>	
<i>AEO</i>	<i>€206.65</i>	
<i>Pension</i>	<i>€50.00</i>	
<i>Saving Scheme</i>	<i>€25.00</i>	<i>€430.00</i>
<i>Actual Net Take Home Pay</i>		<i>€405.00</i>

An issue may arise where Revenue advises that the AEO qualifies for USC relief and the AEO needs to be amended to ensure the net pay after statutory deductions does not fall below the protected earnings figure. If an adjustment was required to be made to the AEO, the USC would also be recalculated. By recalculating the USC, the adjustment to the AEO would subsequently need to be recalculated and so on. This issue does not arise where USC relief is not granted through payroll. In addition, where Revenue advises that only a portion of the AEO qualifies for USC relief, which portion of the order should be amended, the child portion or the spouse portion, or should both be equally amended?

Unfortunately, the legislation which introduced USC does not address this situation. The easiest solution for the employer would be to calculate the USC on the gross pay before any AEO deductions and the employee can take the matter up with Revenue following the end of the tax year.

Where a deduction made in respect of an AEO is less than the normal deduction rate to be attached due to the operation of the protected earnings figure, no further action needs to be taken by the employer, in respect of any shortfall, unless the AEO makes specific reference to how arrears should be collected. Any deductions from an employee, in respect of an AEO, shall be paid over to the Court or the former spouse, as per the terms of that order.

3. Attachment of Earnings for Recovery of Fines

The **Fines (Payment and Recovery) Act 2014** provides that where an individual fails to pay a fine imposed by a Court, the Court is empowered to issue an AEO to recover the fine if the individual is an employee, or in receipt of an occupational pension.⁴

The AEO will contain the:

- (a) fined person's name, address and PPS number;
- (b) name and address of the fined person's employer;
- (c) such other information as the court has in its possession as would assist the employer in identifying the fined person;
- (d) amounts to be deducted from the fined person's earnings;
- (e) date by which the first instalment shall be paid;
- (f) frequency at which such amounts are to be paid; and
- (g) method by which the amounts deducted are to be transferred to the Court.

An employer who receives an AEO to recover a fine is required to deduct the amounts specified in the AEO from an employee's net take home pay (i.e. this deduction does not qualify for Income Tax, PRSI or USC relief) and pay them over to the Court as directed by the Court. The maximum time limit for collecting fines through an AEO is 12 months.

⁴ Fines (Payment and Recovery) Act 2014, Part 4

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If it arises that the employee has insufficient earnings to meet one or more of the payments required under the AEO, the employer is obliged to inform the Court of this fact and the circumstances giving rise to the insufficient earnings within 10 days of the employer becoming aware of this fact.

When an employer receives an AEO he must immediately comply with it, although the employer cannot be penalised for non-compliance unless 10 days have expired since the date of receipt of the AEO.

If an AEO is received by an employer and the employee is not in his employment, that employer must notify the court clerk within 10 days of receipt of the AEO. Likewise, following receipt of the AEO, if the employee ceases employment, the employer must inform the Court clerk within 10 days of the employee departure.

The employer is required to give the employee a written statement of the amounts deducted. The recording of the deduction on the employee's payslip would generally satisfy this requirement.

The **Civil Debt (Procedures) Act 2015** contains similar provisions regarding the collection of certain unpaid debts. This Act provides that creditors can seek a judgement order against a debtor for outstanding debts of €500 up to €4,000. The Act empowers the Courts to issue an AEO to the employer of the debtor (where the debtor is an employee) requiring the employer to deduct a specified periodic amount and pay it to the creditor. This Act is subject to a Commencement Order, which at the time of printing, has not been signed by the Minister.

4. Notice of Attachment

In certain circumstances a person may receive an overpayment from the DSP. Where required, the DSP have the power to issue a Notice of Attachment (NOA) to an employer to recover the overpayment from the employee's wages.⁵

Similarly, Revenue also has the power to issue an NOA to an employer as a means of recovering outstanding taxes, interest or penalties owed to them by an employee.⁶

4.1 Notice of Attachment from the DSP

Where received, the employer is required to deduct the amount specified in the NOA from an employee's net take home pay (i.e. it does not qualify for Income Tax, PRSI or USC relief) over the period specified until the amount is repaid to the DSP. A NOA will only be used by the DSP where an individual otherwise fails to repay an overpayment. The circumstances which would be taken into consideration by the DSP before deciding to issue an NOA include:

- The amount of the overpayment,
- Period of time outstanding since the overpayment,
- Personal circumstances of the individual,
- Amount of the individual's earnings.

If an NOA is received, an employer must make the necessary deductions from the employee's salary and pay them over to the DSP. The amount of any deduction to be made cannot exceed 15% of the employee's net take home pay unless agreed to in writing by the individual. It is not

⁵ Social Welfare and Pensions (Miscellaneous Provisions) Act 2013, Section 15

⁶ Taxes Consolidation Act 1997, Section 1002

Attachment of Earnings Order and Notice of Attachment

envisaged that an employer is expected to monitor the amount of the deduction as a percentage of the employee's net pay.

If the individual leaves employment, obtains employment, or is re-employed by a previous employer, he must notify the DSP within 10 days outlining the details of his earnings. A similar obligation is placed on an employer where he becomes aware that a NOA has been issued in respect of an employee.

4.2 Notice of Attachment from Revenue

If a person has an outstanding tax liability, interest or penalties, Revenue may issue an NOA to the employer stating the specified amount to be deducted from the employee. The amount must be deducted from the employee's net take home pay as no reliefs are available in respect of this deduction. Revenue will generally only issue an NOA to an employer where:

- The outstanding tax, interest and penalties exceed €10,000,
- The amount is outstanding for more than 6 months,
- At least 14 days has elapsed since a final demand was issued to the individual,
- The individual has annual gross earnings in excess of €50,000 based on the most recent information available to Revenue, and
- Revenue has no other means of recovering the money.

If an employer receives an NOA from Revenue, he is required to notify Revenue no later than 10 days of details of the employee's earnings. Failure to do so can lead to a penalty of €3,000 being imposed on the employer. If the amount specified in the NOA is less than or equal to the employee's earnings after statutory deductions, the employer is required to deduct the amount and pay it over to Revenue. If the amount specified is greater than the employee's earnings after statutory deductions, the employer is required to deduct what is permitted by the payment in the current pay period and deduct any outstanding amounts in the next available pay period.

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Company Directors

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-

1. Introduction

A company director can also be known as an “office holder”. The position of ‘office’ can be created by statute, statutory regulation, charter, deed of trust or other such means. While there can be statutory office holders and non-statutory office holders, the tax treatment of payments to all office holders is the same.

Payments to office holders are taxable under Schedule E and tax is collected from such payments under the PAYE system in a similar manner to an employee. However, from a PRSI perspective, the holding of an office is not considered to be an employment and any payment received is a reckonable emolument (a payment which is taxable under the PAYE system but not derived from an insurable employment) as opposed to reckonable earnings (derived from an insurable employment). It is possible for an individual to be both an office holder and an employee of the same company, hence he could be in receipt of both reckonable emolument and reckonable earnings.

There are various types of company directors, the most common of which are the following, as appointed to the board of a company:

- Executive directors
- Worker directors
- Non-executive directors
- Proprietary directors
- Controlling directors.

An **executive director** is a person who is normally a full-time executive employee of the company such as the managing director or chief executive officer.

A **worker director** is usually a person who is appointed to represent the employees of the company at board meetings and is usually a full-time employee of the company. For example, the **Worker Participation (State Enterprises) Act 1977** provides for board level participation

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of workers in certain State Enterprises (e.g. ESB, An Post, RTE, CIE, etc.) through the election of employees for appointment to the board of directors.

Non-executive directors are directors who are not full-time employees of the company, but whose only function is usually to carry out the duties of a company director at board meetings. They would generally be expected to have the relevant skills and experience and bring an external perspective to the board.

A **proprietary director** is defined in tax legislation as a director of a company who is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than 15% of the ordinary share capital in a company.

A **controlling director** is a person who owns or controls 50% or more of the shares of a company. He is the ultimate “boss”, as he cannot be sacked. The term “controlling director” is not defined in tax or Social Welfare legislation, however any director with at least a 50% shareholding can never be out-voted in any company meetings.

In addition, sometimes people are appointed to positions such as Director of Training Services, Director of Tax, etc. who are not company directors under the Companies Acts. This is most common in large organisations, which are not companies, such as professional practices. It is important to appreciate that such directors are to be treated as employees for purposes of tax, PRSI and USC.

2. PAYE treatment of Directors' Fees and Salaries

From an income tax perspective, directors are either an employee or an office holder. All payments made to employees or office holders are subject to income tax and USC under the PAYE system. Tax and USC should be operated on the payment of all directors' fees and salaries unless a PAYE Exclusion Order is received in respect of the individual – see section 7.1 below.

Directors' remuneration also includes remuneration by way of entitlement to shares and the provision of benefits-in-kind (BIK) both of which are generally taxable under the PAYE system. It should be noted that BIKs provided to directors are taxable regardless of the level of the director's remuneration.

As directors' fees and salaries are taxed under the PAYE system, they are entitled to avail of certain reliefs and exemptions which are available to employees, such as the salary sacrifice option for a travel pass or a bicycle under the cycle to work scheme, or the small benefit exemption.

Where a payment is made to a director and the company is unable to establish the nature of the payment at the time it is made, then such a payment is paid to the director in his or her capacity as an office holder and as such is taxable under the PAYE system. Any such payment will be liable to tax, USC (and PRSI if applicable) through payroll.

A director can also be reimbursed for expenses which are wholly, necessary and exclusively incurred in the performance of his duties. He can be paid tax free travel and subsistence payments which do not exceed the civil service rates if he uses his own car, van or motorbike for business travel where he performs his duties while temporarily away from his normal place of work.

Any vouched travel and subsistence expenses (e.g. flights, taxis, hotels, etc.) reimbursed to a **non-resident non-executive director** for attending board meetings of an Irish company are exempt from tax, PRSI and USC, subject to the following conditions:

- The expenses must be vouched (receipts are required),
- The director must not be resident in Ireland, and
- The director must not be a full-time working director of the Company.

Any travel and subsistence expenses, up to the prevailing Civil Service rates, reimbursed to a **resident non-executive director** for attending board meetings of an Irish company are exempt from tax, PRSI and USC, subject to the income (excluding the amount of the travel and subsistence payments) from the directorship not exceeding €5,000 per tax year.

If the above conditions are not met, then the re-imbursement of the travel and subsistence expenses in attending board meetings will be fully taxable.

Proprietary directors do not qualify for the PAYE tax credit if they own or control (either directly or through the medium of other persons or companies, or by any other indirect means), more than 15% of the ordinary share capital of the company, but they are entitled to claim the Earned Income tax credit.

Directors' fees should not be paid outside the PAYE system based on an invoice received from a director (including a non-executive director) or from a company which the director owns.

A credit for any tax (including USC, PRSI and LPT) deducted under the PAYE system will be denied to any director or employee, who either alone or with connected persons, owns or controls more than 15% of the shares of a company, until such time as the tax is remitted to Revenue.

2.1 Partnerships

Currently a partner, who is a solicitor or accountant of a legal or accountancy firm, and also holds a directorship of an Irish Incorporated Company, may apply to Revenue in writing seeking permission to have any remuneration arising from his directorship to be paid to the partnership for the benefit of all partners, and be divided amongst the partners which results in the partners paying income tax, USC and PRSI on the income under the self-assessment system. **This system only operates on a “prior approval” basis.** Revenue will operate this system of “prior approval” in respect of applications from a solicitor or accountant of a legal or accountancy partnership, subject to the following conditions:

- The partnership agreement provides for the division amongst all the partners of such directors' remuneration attributable to one or more partner,
- In comparison to the partnership income, such directors' remuneration is insignificant,
- The relevant partner is not a shareholder of the relevant company,
- The relevant partners:
- Undertake to ensure that such directors' remuneration paid into an account for the benefit of all the partners is paid out in full to each partner in accordance with the provision in the partnership agreement, and
- Accept that such remuneration is taxable in full in their hands (and is liable to USC) in the tax year in which it was paid into the said account for the benefit of the partners and without offset of any of the partnership's business expenses.

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When permission is granted, a PAYE Exclusion Order will issue to the Irish Company of which the partner is a director, which will allow the directors' remuneration to be paid without deduction of tax or USC to the partnership. Where a PAYE Exclusion Order does not issue, tax and USC must be deducted from the directors' remuneration through payroll.

3. PRSI and Directors' Salaries

The most important step in calculating the PRSI payable by a director is to determine his correct PRSI class.

Individuals who are the beneficial owner of a company or who are able to control, directly or indirectly through other companies or by any other indirect means, 50% or more of the ordinary share capital of a company (i.e. controlling directors), cannot be insured for PRSI purposes as an employee (PRSI Class A) of that company as they are included in the definition of an excepted employment i.e. it is not an insurable employment. However, as their salary is taxable through the PAYE system, it is a reckonable emolument. Controlling directors are therefore classified as self-employed and are liable to pay Class S PRSI.

In some decisions given by the Scope Section of the DSP, they indicated that the mere fact that a person is married to a controlling director does not mean that the individual is able to automatically control 50% or more of a company wholly or mainly owned by their spouse. In other words, the fact that an employee is married to a controlling director is irrelevant in determining the PRSI class applicable to his/her income from that company. The working relationship in this case is between the individual and the limited company and as such the individual's terms and conditions of employment will determine whether a contract for services (Class S) or contract of services (Class A) exists. Where the individual does not own or control 50% of the ordinary share capital in his own right, it would be cautious to seek a ruling from Scope Section the DSP regarding the individual's PRSI classification.

The PRSI classification of individuals who own or control (directly or indirectly) less than 50% of the shareholding of a company is determined on a case by case basis by the Scope Section of the DSP. PRSI Class A will apply where the DSP determines that the individual is employed under a contract of service. Otherwise Class S will apply where it is determined that the individual is not engaged under a contract of service.

One of the most common mistakes which gives rise to the incorrect PRSI classification of company directors is the mistaken belief that directors who own or control more than 15% of the share capital of a company are to be automatically regarded as self-employed contributors (PRSI Class S). This is **not correct** as this condition only applies to their entitlement to the PAYE tax credit (15% shareholding or less) or the Earned Income tax credit (more than 15% shareholding) and has absolutely no bearing whatsoever on their PRSI classification.

Case law: Neenan Travel Ltd v Minister of Social & Family Affairs IEHC 4582011

An employee (Mr Leech) commenced employment as an employee with Neenan Travel Ltd in 1972 and PRSI Class A contributions were paid up until 5th April 1992 and Class S contributions were paid from 6th April 1992 up until December 2003 when his employment ended. In May 1988 he acquired a 16.7% shareholding in the company. On termination of the employment he was paid a termination payment, part of which included statutory redundancy.

A refusal of the 60% rebate claim by the Dept. of Enterprise, Trade and Employment due to Mr Leech not being "compulsorily insured for all Social Welfare benefits at the time of redundancy"

led to an investigation into his insurability. A deciding officer from the Dept. of Social & Family Affairs and an appeals officer found Mr Leech to be an employee, taking into account the following factors. Mr Leech:

- *Did not own the business. He only had a 16% shareholding*
- *Was paid a fixed monthly salary*
- *Worked a 40 hour week*
- *Got holiday pay and sick pay*
- *Was paid expenses*
- *Supplied labour only and had to render personal service*
- *Was not free to hire another individual to assist him and could not send a substitute*
- *Was treated as an employee as to how, what or when the work is done*
- *Had his remuneration decided by the company*
- *Did not stand to lose or gain financially from the work performed*

Neenan Travel Ltd made a payment of €59,368.99 to the Department of Social & Family Affairs in respect of employer PRSI, following which the company received €19,200 as the 60% employer rebate of statutory redundancy.

Neenan Travel Ltd then took proceedings in the High court seeking to recover the €59,368.99 which was paid to the Department. Taking into account all the factors, the High Court upheld the view of the Dept. of Social & Family Affairs and ruled that Neenan Travel Ltd was not entitled to the PRSI refund of €59,368.99.

Some of the main points to come from this case are that each case has to be examined on its own facts, however it did refer to the point that a substantial shareholding could have an influence in determining the employment status of a director. The Court also gave a lot of consideration to the “enterprise test” which can be summarised to say that an individual will be regarded as providing his service under a contract of service (i.e. an employment) where he is performing those services for another person and not for himself.

4. PRSI and Directors’ Fees

As a general rule, PRSI Class S applies to the payment of directors’ fees to people under State pension age (currently 66) who hold a directorship with a company as a directorship is deemed to be an office holding as opposed to an employment. This applies even where the individual is employed under a contract of employment in the company and is liable to PRSI under Class A in respect of his salary. An individual may have a contractual entitlement to be paid a salary based on a contract of employment, but any fees paid will be dependent on a decision made by the board of the company.

A director who performs duties solely in his/her capacity as a director and received payment of fees is generally liable to self-employment contributions at PRSI Class S in respect of those fees. As such non-executive directors are treated as Class S for PRSI purposes where their duties are performed solely in the capacity as a director (e.g. the attendance at board meetings). However, where the director is aged 66 or over he is not insurable (PRSI Class M) or where the director is not resident in Ireland, he may be regarded as an excepted self-employed contributor – see section 7.2 below.

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Example 1

Joe Ryan and John O'Toole are directors of JJ Ltd. Joe owns 80% of the shares and John owns 20% of the shares. John is employed under a contract of employment. Advise what PRSI contribution class applies to each director in respect of salary payments and any directors' fees.

Solution 1

As Joe owns 80% of the shares, he controls the company and any salary or fees paid to him is insurable under PRSI Class S. John is employed under a contract of employment with the company and will be liable for PRSI Class A as an employed contributor in respect of his salary and Class S in respect of any directors' fees.

5. Directors of State Bodies and State Companies

Directors appointed to the board of a State Body or Company, including commercial State companies, are considered to be “public office holders”. The individuals are generally appointed to these positions, and they are not considered to be positions of employment.

Social Welfare legislation provides that certain emoluments are not liable to PRSI. Any payment made in respect of the holding of a public office under the State is exempt from PRSI (i.e. PRSI Class M applies). While a Class K liability of 4% applies to elected and constitutional public office holders, it does not extend to those who sit on the board of a State Body or State Company.

6. Directors who are also Modified Rate Contributors

Modified rate contributors (i.e. those insurable at PRSI classes B, C or D in the public or civil service) in receipt of reckonable emoluments from a company (e.g. director fees or salary where the individual is a controlling director of the company) are insurable under PRSI Class K which gives rise to a 4% PRSI liability. Class K does not give rise to any benefits from the Department of Social Protection. Where the individual is aged 66 years or over, PRSI Class M will apply.

Example 2

Mary and Harry are a married couple. Mary is a nurse and is liable to PRSI Class D on her public service salary. Harry runs a company, of which Harry and Mary are the controlling shareholders and directors. Harry is liable to PRSI Class S in respect of his emoluments received from the company. What PRSI class applies to director fees paid to Mary?

Solution 2

As Mary is also a modified rate contributor, PRSI Class K applies to her director fees.

7. Non-Resident Director of an Irish Company

7.1 Tax and USC for Non-Resident Directors

In the Irish tax case of **Tipping v Jeancard**, it was held that a director of an Irish incorporated company holds an Irish public office and as such any income attributable to the directorship is chargeable to tax in Ireland under the PAYE system irrespective of his tax residence position or where the duties of the office or director are exercised. As such a PAYE Exclusion Order will generally not be issued to a non-resident director.

Any payments made to a non-resident director are liable to tax and USC through payroll based on the latest Revenue Payroll Notification (RPN) retrieved from Revenue. If the employer does not hold an RPN for the individual, they should operate the Emergency Basis of tax and USC.

In a limited number of situations, a Double Taxation Agreement (DTA) may provide that director fees are taxable in the country of residency of the individual and a PAYE Exclusion Order may issue in these situations. Where it can be shown that under the terms of a DTA, the directorship income is relieved from the charge to Irish tax, Revenue will issue a PAYE Exclusion Order, and the employer will not be required to deduct tax or USC from the non-resident director.

However, a PAYE Exclusion Order will not be issued in respect of directorship income of a non-resident director of an Irish incorporated company where the director is resident in a non-DTA country.

7.2 PRSI for Non-Resident Directors

A PAYE Exclusion Order does not exclude a non-resident director from PRSI. However, a person who is regarded as **neither resident nor ordinary resident** in the State for tax purposes and **whose reckonable income**, if any, for that year does not include income from a trade or profession, shall be an excepted self-employed contributor and will not be liable to PRSI. **Note:** This definition makes no reference to whether the individual has reckonable emoluments or not.

Hence, a non-executive director of an Irish Company who is neither resident nor ordinarily resident and who is in receipt of reckonable emoluments (e.g. director's fees); who has no reckonable income or whose reckonable income does not consist of income from a trade or profession, is an excepted self-employed contributor and is not liable to pay PRSI on his director's fees.

We have seen some opinions from the Scope Section of the DSP indicating that reckonable emoluments paid to a non-resident director should be liable to PRSI Class S and should only be exempted from PRSI where the individual produces an A1 Portable Document or Certificate of Coverage which exempts him from PRSI in Ireland. However, as noted above, the definition of this category of excepted self-employed contributor in the social welfare legislation makes no reference to whether the individual has reckonable emoluments or not.

Example 3

Henry Smith is a US resident and is a non-executive director of LDS Ltd, an Irish incorporated company. He receives an annual fee of €25,000 for attending board meetings in Ireland. Henry has no other income in Ireland. What PRSI class applies to Henry's directors' fees?

Solution 3

As Henry is neither resident nor ordinarily resident in Ireland, and has no income from a trade or profession, he is considered an excepted self-employed contributor and will not be liable to PRSI. LDS Ltd should apply PRSI Class M to his director's fees (reckonable emoluments).

Payroll operators who are making payments to non-resident directors should seek written confirmation from the director that they have no other income arising in Ireland from a trade or profession. If the operator is unsure or cannot obtain confirmation from the director they should subject the payment to PRSI Class S. The non-resident director can claim any refund due directly from the PRSI Refunds section of the DSP.

CHAPTER 16

Residence in Ireland for Income Tax Purposes

- 1. Residence in Ireland for Income Tax Purposes**
 - 2. Split Year Relief**
 - 3. Entitlement to Personal Tax Credits for Non-Residents**
 - 4. Taxation of Married Couples and Civil Partners and Residency**
 - 5. Double Taxation Agreements**
 - 6. OECD Model Tax Convention**
 - 7. Permanent Establishment**
 - 8. Double Taxation Agreement between Ireland and the UK**
 - 9. Transborder Workers Relief**
 - 10. Transborder Workers and Medical Cards**
 - 11. Seafarer Allowance**
 - 12. Taxation of Employees working in the State for a Foreign Embassy**
-

1. Residence in Ireland for Income Tax Purposes

For income tax purposes, individuals can be categorised as Resident, Ordinary Resident and Non Resident which affect the amount of income tax the individual is liable to pay in Ireland.

1.1 Resident in Ireland for a Tax Year

An individual's residence in Ireland for tax purposes is determined by the number of days he is present in Ireland in a tax year. An individual is resident in Ireland for tax purposes in a tax year if he spends:

- a) 183 days or more in Ireland during that tax year, or
- b) An aggregate of 280 days or more in Ireland in that tax year and the preceding tax year, with a minimum of 30 days in each year.

Where a person spends less than 30 days in Ireland in a tax year, he will not be treated as resident for that year, unless he elects to be resident. A presence in the State at any time during a day will count for determining an individual's residency for tax purposes.

Example 1

If a person spends 200 days in Ireland in a tax year, he is resident in Ireland for tax purposes for that year, based on point (a) above.

If a person spends 150 days in Ireland in year 1, he is not resident for tax purposes in year 1. If he also spends 150 days in Ireland in year 2, he will be tax resident in Ireland in year 2, because he has spent more than an aggregate of 280 days in Ireland in that tax year and the preceding tax year, and he has spent more than 30 days in Ireland in each year. See point (b) above.

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Example 2

Agnieszka is Polish and has lived and worked in Ireland for over 10 years. In April 2023, her company facilitated her request to work remotely from her home in Poland.

Agnieszka will remain tax resident in Ireland in 2023, because she has spent more than an aggregate of 280 days in Ireland in this tax year and the preceding tax year and has spent more than 30 days in Ireland in each year. See point (b) above.

An individual will not be regarded as being present in the State for any period during which he or she arrives in, and departs from, the State and throughout which he does not pass through customs or immigration.

An individual will not be regarded as being present in the State on any day after his intended date of departure if due to exceptional and unforeseen circumstances (e.g. inclement weather, a problem arising with the aircraft, etc.) the individual is prevented from departing the State.

Where an individual is resident in Ireland for tax purposes for a tax year, he is liable to income tax on his **worldwide income**, subject to any relief which may be due under a Double Taxation Agreement. Where the individual is not Irish domiciled, his foreign sourced income is not liable to Irish tax unless it is remitted into Ireland, in which case it is chargeable to tax under self-assessment. Tax residency is determined by the number of days a person spends in a country in a tax year whereas a domicile is the country where a person lives with the intention of remaining there permanently.

Income which is chargeable to tax in Ireland is generally also liable to USC. It is possible for an individual to be resident in two countries for tax purposes in the same tax year.

Income arising from a foreign sourced employment which is exercised in the State is liable to income tax under the PAYE system. This is covered in detail in the chapter entitled Taxation of Inbound Assignees.

Elect to be Tax Resident

An individual who comes to live and work in Ireland, and who would not be deemed to be tax resident for the year of his arrival based on the residency tests as outlined above, may elect to be tax resident for the year of his arrival once he satisfies Revenue that he will be resident for tax purposes in the subsequent tax year. The main reason for electing to be tax resident for the year of arrival is to avail of the full personal tax credits for that tax year. While an election to be tax resident could bring other income within the charge to Irish tax, where the individual is not Irish domiciled, his foreign sourced income is not liable to Irish tax unless it is remitted into Ireland. An individual can elect to be tax resident by contacting Revenue. Once an election is made, it cannot subsequently be withdrawn.

Note: Employees moving to Ireland qualify for split year relief in respect of their employment income in the year they arrive in Ireland. See below for further information on Split Year Relief.

1.2 Ordinarily Resident in Ireland for a Tax Year

Ordinary residence is based on an individual's residence pattern over a number of tax years. Individuals who have been tax resident in Ireland for 3 consecutive tax years become ordinarily resident from the beginning of the 4th tax year. Conversely, individuals cease to be ordinarily resident in Ireland if they have been non-resident for 3 consecutive tax years. An individual can

be non-resident for a tax year but still be ordinarily resident for that year if the absence is temporary (e.g. where an employee is assigned abroad on a temporary assignment).

Individuals, who are ordinarily resident in Ireland, but not resident, are taxable on their worldwide income with the exception of:

- Income derived from a trade or profession which is wholly exercised outside of Ireland,
- Income derived from a non-public office or employment where all of the duties (except incidental duties) are performed abroad,
- Other foreign income (e.g. investment income) which does not exceed €3,810 in a tax year. If it exceeds €3,810, the full amount is taxable.

Revenue will issue a PAYE Exclusion Order to an employer where an employee is being assigned abroad on a temporary assignment and becomes non-resident for at least a tax year, as this period of employment income is not liable to Irish income tax. PAYE Exclusion Orders are not issued in respect of public sector offices or employments as they are taxable in Ireland. PAYE Exclusion Orders are covered in detail in the chapter entitled Taxation of Outbound Assignees.

Example 3

Owen departed Ireland for Spain last year on a 3 year temporary assignment having been employed in Ireland for the last 5 years. Owen received a salary of €100,000 from his employer for this year in respect of his duties which were all performed in Spain. Owen received rental income of €8,500 from renting his home in Ireland. What income is liable to tax in Ireland?

Solution 3

As Owen is ordinary resident but not resident this year, his employment income is not liable to Irish tax as the duties are all performed abroad. His employer should apply for a PAYE Exclusion Order for the duration of the assignment. The rental income is liable to Irish tax and USC.

1.3 Non-Resident in Ireland for a Tax Year

Individuals who are neither resident nor ordinarily resident in Ireland for a tax year are only liable to Irish income tax on:

- Irish source income including the income from an Irish public office (e.g. director fees paid to a non-resident director of an Irish company),
- Income derived from any trade, profession or employment which is exercised in Ireland, subject to any relief which may be available under the terms of a Double Taxation Agreement.

Example 4

Donald, a US resident, is a non-executive director of an Irish company. He received Directors' fees of €15,000. This payment is liable to Irish tax and USC which is collected under the PAYE system.

Where an employee is assigned to Ireland on a temporary assignment, potentially the income is liable to Irish income tax under the PAYE system from the date he commences working in Ireland as the employment is being exercised in Ireland. However, there are certain exceptions where an employer is released from his obligation to operate PAYE in respect of Short-term Business Visitors. This is covered in detail in the chapter entitled Taxation of Inbound Assignees.

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Example 5

Ronaldo, a Brazilian resident, was assigned to work in Ireland for 4 months and was paid €20,000. This payment is liable to Irish tax and USC which is collected under the PAYE system. Ireland does not have a Double Taxation Agreement with Brazil.

2. Split Year Relief

Split year relief applies to individuals who come to live and work as employees in Ireland and to Irish residents who emigrate from Ireland during a tax year. In such cases the tax year is split to ensure that foreign employment earnings earned prior to arrival in the State or after departure from the State are not subject to Irish income tax. This relief only applies to **employment** income. An individual who claims split year residence relief during a tax year is entitled to the personal tax credits and SRCOP for the full income tax year.

An individual arriving into Ireland during the tax year will be treated as being resident from the date of arrival, assuming he was not resident in Ireland for the preceding tax year, and he is here with the intention of being resident in the following tax year. An individual should apply for a PPSN and register the employment online using the Jobs and Pensions service in myAccount to obtain his Tax Credit Certificate and to enable a Revenue Payroll Notification to be made available to the employer, which are generally issued on the Cumulative Basis. This may result in that person having little or no income tax deducted from his pay for the remainder of the tax year of arrival.

USC is also not payable in respect of the employment income of a non-resident individual that is attributable to duties exercised wholly outside Ireland, where there is no charge to income tax in Ireland.

Example 6

John commenced employment in Ireland for the first time in September. He intends to work in Ireland for the next 5 years. John is single and his employer received an RPN with the appropriate SRCOP and tax credits. His earnings from September to December are €18,000. Calculate John's Irish tax and USC liabilities for the current tax year.

Solution 6

As John qualifies for split year relief, he is granted the annual SRCOP and tax credits even though he is only in Ireland from September. His tax and USC liabilities are calculated as follows:

Earnings September to December		€18,000
SRCOP		€40,000
Gross tax	€18,000 @ 20% =	€3,600
Less tax credits		<u>€3,550</u>
Tax liability		€50
USC liability	€12,012 @ 0.5% =	€60.06
	€5,988 @ 2% =	<u>€119.76</u>
		€179.82

An individual departing from Ireland during the tax year will be treated as resident in Ireland up to the date of his departure assuming that he will not be resident in Ireland for the following tax year. Therefore, he may be entitled to a tax refund in the year of departure. This refund may be

claimed online via myAccount or by completing and submitting a Form P50. Employees who want to claim a refund after the end of the tax year can do so by completing an income tax return.

Accompanying documentation confirming that the individual is going to live abroad permanently or for a specific period resulting in the individual becoming non-resident in the subsequent tax year can be submitted via myEnquiries.

Example 7

Ronan is leaving Ireland in July to take up a 5 year contract in the U.S. Ronan submitted an online unemployment repayment claim via myAccount and supplied a letter stating he will not be resident for the next tax year. His earnings from January to the end of June were €30,000 and he paid tax and USC of €6,224.94 and €973.41 respectively during that period. He is entitled to the single person SRCOP and tax credits. Calculate Ronan's tax and USC liability for the current tax year.

Solution 7

As with example 6, even though Ronan only worked from January to June, he is granted the annual SRCOP, tax credits and USC COPs under the split-year residence relief. This results in a refund of tax and USC which is calculated as follows:

Earnings January to June		€30,000.00
SRCP		€40,000.00
Gross tax	€30,000 @ 20% =	€6,000.00
Less tax credits		€3,550.00
Tax liability		€2,450.00
Less tax paid: January to June		<u>€6,224.94</u>
Tax refund due		€3,774.94
USC liability	€12,012 @ 0.5% =	€60.06
	€10,908 @ 2% =	€218.16
	€7,080 @ 4.5% =	<u>€318.60</u>
		€596.82
Less USC paid: January to June		<u>€973.41</u>
USC refund due		€376.59

3. Entitlement to Personal Tax Credits for Non-Residents

Generally speaking, a non-resident individual is liable to income tax and USC on income arising in Ireland. He is entitled to the appropriate USC COPs, SRCOP but is not entitled to any personal tax credits in Ireland.

However, a non-resident individual is entitled to claim a portion of the personal tax credits based on the amount of his Irish income as a percentage of his total worldwide income, if he:

- Is an Irish citizen living abroad,
- Is a former Irish resident who is now living abroad due to health reasons (including the health of a family member resident with him/her),
- Is a citizen of another EU Member State or the United Kingdom, or
- Was a British citizen before 5th April 1935.

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Individuals who are resident in another EU Member State or the United Kingdom are entitled to full personal tax credits if at least 75% of their worldwide income is taxable in Ireland.

4. Taxation of Married Couples and Civil Partners and Residency

4.1 Both Spouses and Civil Partners Resident in Ireland

Married couples and civil partners who are resident in Ireland may be assessed to income tax in one of three ways: Joint Assessment, Separate Assessment, or Single Assessment (Separate Treatment). Joint assessment is generally most favourable; however, the couple can elect to be assessed under the separate assessment basis, or the single assessment basis. Where a couple are assessed on the joint assessment basis, both incomes are assessed to income tax together and the married couple or civil partnership tax credits and SRCOP apply. Any repayment of tax overpaid will be allocated between the two spouses or civil partners.

USC applies on an individual basis with each spouse being entitled to the appropriate USC COPs.

4.2 One Spouse or Civil Partner Resident in Ireland

Where only one spouse or civil partner is resident in Ireland and has income chargeable to tax in Ireland, the tax treatment of the spouse or civil partner who is resident in Ireland will depend on whether or not the non-resident spouse or civil partner is in receipt of income.

Where the non-resident spouse or civil partner is in receipt of income in another country, the spouse or civil partner who has income chargeable to tax in Ireland is chargeable on that income on the basis of separate treatment as a single person and is entitled to the single person tax credits and SRCOP.

However, where the non-resident spouse or civil partner has no income, then the spouse or civil partner who has income chargeable to tax in Ireland is chargeable on that income on the basis of joint assessment and is entitled to the married couple or civil partnership tax credits and SRCOP.

USC applies on an individual basis.

4.3 Both Spouses or Civil Partners Not Resident in Ireland

Where both spouses or civil partners are not resident in Ireland but have income chargeable to tax in Ireland, the tax credits granted will depend on whether or not each spouse or civil partner is in receipt of income. This situation may arise for transborder workers or for those working in Ireland on a temporary assignment.

Where one spouse or civil partner has income chargeable to tax in Ireland and the other spouse or civil partner is in receipt of income outside of Ireland, the spouse or civil partner with the Irish income is chargeable to tax on that income on the basis of separate assessment as a single person and may be granted the single person SRCOP and a proportion of the single person tax credits based on his/her worldwide income. However, residents of other EU Member States or the United Kingdom are entitled to full personal tax credits where at least 75% of their worldwide income is taxable in Ireland.

Where both spouses or civil partners are not resident in Ireland, one spouse or civil partner has income chargeable to tax in Ireland and the non-resident spouse or civil partner has no income then the spouse or civil partner who has income chargeable to tax in Ireland is chargeable to tax on that income on the basis of joint assessment and is entitled to the married couple or civil partnership SRCOP and a proportion of the married persons tax credits based on his/her

worldwide income. However, residents of other EU Member States or the United Kingdom are entitled to full personal tax credits where at least 75% of their worldwide income is taxable in Ireland.

A measure of tax relief may also apply where the non-resident spouse or civil partner has income, depending on the level of that income.

USC applies on an individual basis.

5. Double Taxation Agreements

Double taxation can occur where 2 or more countries seek to impose tax on the same person in respect of the same income for the same periods where an individual is tax resident in each of those countries.

In the EU where the free movement of people is a fundamental right, and a world where a significant number of employees are internationally mobile, it makes perfect sense for countries to enter into agreements, known as Double Taxation Agreement (DTA) with other countries to ensure that the same income is not taxed in each country (i.e. to avoid double taxation). A DTA is a negotiated agreement between 2 countries.

DTAs outline the rules regarding the taxation of a particular type of income such as employment income, directors' fees, pension income, etc. Where an individual is resident in Ireland and is in receipt of income from another country, a DTA will ensure that the income is not taxed by both the country of origin and the country of residence. A DTA will either exempt the income from being taxed in one of the countries or allow a credit for the tax paid in in the country of origin against the total tax liability arising in the country of residence.

If an individual is resident in Ireland and is in receipt of income from a country with which Ireland does not have a DTA, then he will be liable to Irish income tax on the net amount received after deduction of the foreign tax paid.

From a payroll perspective, DTAs often facilitate employees to work in another country for a short period of time without giving rise to payroll taxes in that country. They create certainty that an employee will not be doubly taxed on the same income where the employee is tax resident in both countries.

DTAs apply to direct taxes, which, from an Irish point of view include Income Tax, Universal Social Charge (USC), Capital Gains Tax and Corporation Tax. This chapter focuses on Income Tax and USC which are the taxes relating to employment income.

5.1 Double Taxation Agreements Countries

Ireland has entered into Double Taxation Agreements (DTAs) with 76 other countries of which 74 are in effect, as follows:

Albania	Hong Kong	Panama
Armenia	Hungary	Poland
Australia	Iceland	Portugal
Austria	India	Qatar
Bahrain	Israel	Romania
Belarus	Italy	Russia

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Belgium	Japan	Saudi Arabia
Bosnia & Herzegovina	Kazakhstan	Serbia
Botswana	Kenya*	Singapore
Bulgaria	Korea	Slovak Republic
Canada	Kuwait	Slovenia
Chile	Kosovo	South Africa
China	Latvia	Spain
Croatia	Lithuania	Sweden
Cyprus	Luxembourg	Switzerland
Czech Republic	Macedonia	Thailand
Denmark	Malaysia	Turkey
Egypt	Malta	United Arab Emirates
Estonia	Mexico	Ukraine
Ethiopia	Moldova	United Kingdom
Finland	Montenegro	United States
France	Morocco	Uzbekistan
Georgia	Netherlands	Vietnam
Germany	New Zealand	Zambia
Greece	Norway	
Ghana*	Pakistan	

*Not yet in effect

6. OECD Model Tax Convention

Countries who are members of the international Organisation for Economic Co-operation and Development (OECD) agree that it is desirable to clarify, standardise and confirm the fiscal situation of taxpayers through the application of common solutions to double taxation. The OECD produced a model convention¹ which countries can use when formulating agreements with another country. **However, countries are not compelled to follow this model convention. As such, it is recommended that the specific DTA is consulted when dealing with a particular situation.**

The OECD Model Tax Convention on Income and Capital is organised into different articles which details the taxing rights of each country in respect of particular income. The following is an outline of the Articles of the OECD Model Tax Convention which relate to employment accompanied by commentary and examples.

Article 15 – Income From Employment

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

Commentary from an Irish Perspective:

This article states that, subject to the exceptions for Directors' fees (Article 16), Pensions (Article 18) and Government Service (Article 19), employment income is only taxed in the State where

¹ <http://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm>

the employment is exercised. *The employment is exercised in the place where the employee is physically present when performing the duties. Employment income includes Benefits in Kind (BIKs) and employment income of directors but excludes fees payable to a director in his capacity as a director of the board of a company (Article 16) and pension income (Article 18). This Article is of key importance for any employer who sends employees abroad for work purposes or who facilitates an employee working from home, where the employee's home is in another country.*

In accordance with Revenue's guidance, the interaction of a DTA and domestic tax legislation must be considered. A DTA cannot impose a charge to tax in Ireland. In order for Ireland to be able to charge tax arising from a taxing right under a DTA, such a charge must also be provided for under domestic legislation. Income from foreign employments which is attributable to the performance of duties in the State is within the charge to tax under Schedule E. It follows that such income is considered "emoluments" and is within the scope of the PAYE system of deductions at source. There is clearly a difference between those taxing rights afforded by a DTA and the charge imposed by domestic legislation. In this regard, it is important to remember that domestic legislation is designed to deal with all individuals, including those not covered by a DTA or those where the DTAs in place differ from the OECD Model Convention.

Example 8

Logan is a US National and has been employed in the US for the past 10 years. He was assigned to Ireland on a temporary 2 year assignment in May 2023 and will perform all his duties of employment in Ireland for the next 2 years. His employment income from May 2023 is taxable in Ireland as this is where he performs the duties of his employment.

The US tax year runs on a calendar year basis. Having spent 31 days or more in the US in the current year and 183 days during the 3-year period that includes the current year and the 2 preceding years, Logan is tax resident in the US. As he will spend 183 days or more in Ireland in 2023, he will also be tax resident in Ireland for 2023.

This rule confirms that his employment income from May 2023 is taxable in Ireland as this is where he performs the duties of his employment.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
 - b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - c) The remuneration is not borne by a permanent establishment which the employer has in the other State.

Commentary from an Irish Perspective:

This provision provides for an exemption to paragraph 1. Where an employee spends no more than 183 days in any 12 month period in the other State, the employment income will be taxable only in the employee's home country where the employee is not paid by, or on behalf of, an employer who is resident in the other State, and the remuneration is not borne by a permanent establishment which the employer has in the other State. All 3 conditions must be met for the exemption to apply.

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Looking at each point in more detail:

- *The 183 day test is like the statutory residence test as outlined earlier in the chapter.*
- *The employee's remuneration must not be paid by an employer who is resident in Ireland. In other words, the employee must hold a genuine foreign employment and continues to be paid by their foreign employer. Revenue deems the term "paid" to mean the physical transfer of funds to the employee. Revenue will also consider the legal nature of the term "employer" when determining if a genuine foreign employment exists.*
- *The remuneration cannot be borne by a permanent establishment which the foreign employer has in Ireland. Where the foreign employer has no permanent establishment in the State, Article 15(2)(c) is not relevant and requires no further consideration. Where the foreign employer has a permanent establishment in Ireland, where a recharge of costs occurs, such costs will be considered to be "borne" by the Irish entity and Article 15(2)(c) is not met. In considering whether the costs have been recharged, all costs associated with the short-term assignment should be considered. For example, where an Irish branch or subsidiary partially bears the costs of the short-term business visit or the short-term assignment (e.g. travel and subsistence expenses), this condition is not met. Management charges (with a mark-up) are not considered recharges for the purpose of interpreting this article.*

This provision provides for the operation of the Short Term Business Visitor (STBV) scheme for employees who are assigned to another DTA country for up to 6 months.

Example 9

If we take Logan from the previous example, and assume he was assigned to Ireland on a 4 month assignment in May 2023. Assuming the conditions outlined above are met (i.e. he is not paid by, or on behalf of, an employer who is resident in Ireland and the remuneration is not borne by a permanent establishment which his employer has in Ireland), then the income from this temporary assignment is not taxable in Ireland as Logan's presence in Ireland did not exceed 183 days.

While the DTA confirms that Logan's income is only taxable in the US, a charge to tax arises under the PAYE system in Ireland. As Logan's assignment exceeds 60 workdays (assume a 5 day working week), it will be necessary for his employer to apply for a dispensation from the operation of PAYE. This is outlined in detail in the chapter entitled Taxation of Inbound Assignees.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first mentioned State.

Commentary from an Irish Perspective:

This paragraph provides that the employment income of those employed on ships or aircraft operated in international traffic (e.g. travel between 2 or more countries such as travel between Ireland and the UK) is only taxed in the employee's State of residence (home country).

Prior to 2022, Irish tax legislation provided that the employment income arising to a flight crew member in respect of an aircraft operated in international traffic was taxable in Ireland under the PAYE system where the place of effective management of the company operating the aircraft

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was based in Ireland regardless of the fact that the employment duties were exercised outside of Ireland and the employee was not resident in Ireland.

Since 1st January 2022, the domestic legislation was amended to provide that the employment income arising to a flight crew member in respect of an aircraft operated in international traffic is not taxable in Ireland, and is only taxable in the employee's country of residence where the individual:

- *Is not resident in Ireland*
- *Is resident in a country with which Ireland has a Double Taxation Agreement (DTA), and*
- *Is subject to tax on that income in a DTA country.*

Where these conditions are not met, the employment income arising to a flight crew member in respect of an aircraft operated in international traffic is taxable in Ireland under the PAYE system.

Where an employee exercises his employment on board a plane which operates in domestic traffic only (e.g. Dublin to Cork; Frankfurt to Berlin; London to Manchester; etc.), income attributable to this employment is generally taxed in the country in which the employment is exercised.

Article 16 – Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Commentary from an Irish Perspective:

This Article relates only to directors' fees which arise to a director in his capacity as a member of the board and provides that such fees may be taxed in the State in which the company is resident. A director's wages and salaries are covered under Article 15.

From an Irish perspective it is long established that a director of an Irish incorporated company holds an Irish public office and such income is taxable under the PAYE system. This means that any form of director's income, fees or salaries are taxable under the PAYE system.

Article 18 – Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Commentary from an Irish Perspective:

This Article provides that pension income is only taxable in the country where the individual is resident, except public service pensions, which are only taxable in the country from which they are paid. Hence why Revenue issue a PAYE Exclusion order in respect non-residents in receipt of private sector pensions but not in respect of public sector pensions.

Article 19 – Government Service

4. a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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- b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

Commentary from an Irish Perspective:

This paragraph provides that income arising from a public or civil service employment or office holding are only taxable in the country from which they are paid. However, such income is taxable in the other State if the services are performed in the other State.

- 5. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a Political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

Commentary from an Irish Perspective:

This paragraph provides that public or civil service pension income is only taxable in the country from which it is paid. However, such income is only taxable in the other State if the individual is a resident and a national of that other State.

- 6. The provisions of Articles 15, 16, 17, and 18 shall apply to salaries, wages, pensions and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Commentary from an Irish Perspective:

This paragraph provides that salaries and pensions paid by commercial State Enterprises are subject to the rules outlined above in respect of private sector employments and pensions. For example, Revenue could issue a PAYE Exclusion Order to An Post, ESB or RTE where a retired employee is non-resident and in receipt of a pension from such an Enterprise.

Article 20 – Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Commentary:

This Article provides that where a student or apprentice moves to the other State for the purpose of his education or training, payments made for the purpose of his maintenance, education or training are not taxable in that other State provided the payment does not arise from a source within that State. Any payment of wages for services rendered falls back into the normal rules outlined in Article 15 above.

7. Permanent Establishment

The term Permanent Establishment (PE) is generally associated with a company's corporation tax obligations. The profits arising from a PE are taxable in the country in which the PE is located. Hence employers need to be aware of the possibility of creating a PE in another country when seconding employees abroad, or indeed permitting employees to work remotely in another country, as it may give rise to corporation tax obligations in that country. As outlined above, the establishment of a PE in another country may also prevent the operation of the Short-Term Business Visitor scheme where the costs of that assignment are borne by that PE.

Article 5 of the OECD Model Tax Convention defines a Permanent Establishment as follows. For the purposes of this text, only some of the main points which lead to the creation of a PE are established.

Article 5 – Permanent Establishment

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:
 - a) A place of management,
 - b) A branch,
 - c) An office,
 - d) A factory,
 - e) A workshop, and
 - f) A mine, an oil or gas well, a quarry or other place of extraction of natural resources,

Commentary:

The definitions in paragraphs 1 and 2 relate to a physical premises/workplace.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

Commentary:

Where a company has employees working on a building site for more than 12 months, this constitutes a PE, even though the company may have no physical premises in the country. Installation projects are not necessarily limited to construction projects, for example, it could include the installation of IT equipment or software.

Paragraph 4 confirms that facilities used for the storage of stock or goods will not create a PE, provided the facilities are only used for these purposes.

5. Notwithstanding the provisions of paragraph 1 and 2, but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are
 - a) in the name of the enterprise, or
 - b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
 - c) for the provision of services by that enterprise,

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that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such persons are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4.1 would apply) would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

Commentary:

This paragraph confirms that the presence of an employee who has the authority to conclude contracts or has a lead role in the concluding of contracts, on behalf of the company is sufficient to create a PE, even where the company has no physical premises in that country.

Employers should be aware of the consequences of seconding employees abroad or facilitating employees working remotely in another country as it could have unintended consequences for the employer. In addition to the possibility of having to operate payroll taxes in the other country, the employer could also be liable for corporate taxes in the other country where a PE is formed.

8. Double Taxation Agreement between Ireland and the UK

As outlined previously, while the OECD provide a Model Tax Convention, countries are not compelled to follow that Model Convention. Due to the proximity of the UK and a significant number of individuals who reside in Ireland and work in the UK, and vice versa, the following is some of the main differences between the Ireland – UK DTA in comparison to the OECD Model Tax Convention.

Article 15: Employments

The wording in paragraphs 1 and 2 of this Article follows the OECD Model Tax Convention as outlined. Paragraph 3 of the OECD Model Tax Convention in relation to the taxation of those who exercise their duties of employment on board flights or ships engaged in international traffic was replaced by the following provision in relation to directors' remuneration as follows:

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
 - b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - c) The remuneration is not borne by a permanent establishment which the employer has in the other State.
3. In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if references to "employer" were references to the company.

Commentary:

From an Irish perspective it is long established that a director of an Irish incorporated company holds an Irish public office and such income is taxable under the PAYE system. This means that any form of director's income, fees or salaries are taxable under the PAYE system.

Article 17: Pensions

1. Subject to the provisions of paragraphs (1) and (2) of Article 18, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State.
2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Commentary:

Similar in principle to the OECD Model Tax Convention in that pension payments, excluding public service pensions, are taxable in the State where the employee is resident. For example, a pension paid by an Irish Life Assurance company to an individual who is resident in the UK is only taxable in the UK. Revenue will issue a PAYE Exclusion Order in this instance where the individual is not tax resident in Ireland.

Article 18: Governmental Functions

1. Remuneration or pensions paid by, or out of funds created by, Ireland or a local authority thereof to any individual in respect of services rendered to the Government of Ireland or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in Ireland unless the individual is a United Kingdom national without also being a national of Ireland.
2. Remuneration or pensions paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of functions of a governmental nature, shall be taxable only in the United Kingdom unless the individual is a national of Ireland without also being a United Kingdom national.
3. The provisions of paragraphs (1) and (2) of this Article shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business.

Commentary:

This Article provides that Irish public or civil service remuneration, or pensions are taxable in Ireland unless the individual is a UK national without being an Irish national.

Article 5: Permanent Establishment

The OECD Model Convention was amended to confirm that a building site or construction or installation project which lasts for more than 6 months will create a PE in the other country. Given the high number of Northern Ireland based enterprises who carry out construction work in the State, Article 5 of the Ireland - UK DTA is regularly invoked by Revenue to establish the existence or otherwise of a PE in the State.

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9. Transborder Workers Relief

Individuals who live in Ireland and commute on a daily or weekly basis to their place of work outside of Ireland may qualify for Transborder Relief (commonly referred to as Cross-Border Relief for employees living in the Republic of Ireland who commute to their place of work in Northern Ireland). For example, an individual who lives in Dundalk and commutes to work in Belfast daily.

This relief insures that:

- The individual will only have an Irish tax liability if he has income other than his employment income which was taxed in the other country, and
- The individual will not pay any additional Irish tax on the employment income, which is subject to tax in another country.

The following conditions apply:

- The duties of the employment must be carried out in a country, with which Ireland has a DTA,
- The employment must be held for a continuous period of at least 13 weeks in a tax year,
- The employment income must be subject to tax in that country and not exempt from tax in that country,
- The foreign tax due on the employment income must be paid to the relevant authorities and not be repaid to the individual, and
- For every week the individual works abroad he must be present in Ireland for one day in that week.
- Transborder relief can be claimed at the end of the income tax year but cannot be claimed in addition to Split Year Relief.
- The relief only applies to private sector employments.

If an employee performs duties within Ireland which are merely incidental to the duties performed outside of Ireland, then these duties may be regarded as being performed outside of Ireland. Incidental duties would depend on each situation but may include administration duties such as arranging travel and meetings which are ancillary to the overall role.

A director who attends meetings in Ireland will not be considered to be performing incidental duties as management of the company rests with the directors and if he attends a meeting it is likely that participation is necessary and is therefore a substantive duty.

For the duration of the Covid-19 pandemic, Revenue concessionally allowed individuals to claim this relief where the employee was required to work from home in Ireland provided all other conditions were satisfied. This concession operated from March 2020 up to 31st March 2022 to support the return to work on a phased basis from 24th January 2022.

Since 1st April 2022, individuals are required to satisfy all the conditions outlined above, including the requirement that all duties (other than incidental duties) are exercised in a DTA country. Where foreign employers permit employees to work from home in Ireland following 1st April 2022, this could give rise to a PAYE obligation for the foreign employer as income from a non-Irish sourced employment which is attributable to the performance of the duties in Ireland is taxable under Schedule E which is collected under the Irish PAYE system by the foreign employer.

Transborder Relief does not apply where the income from the qualifying employment:

- Is subject to the remittance basis of tax,
 - Is paid to a proprietary director or his/her spouse/civil partner,
 - Is subject to a claim for foreign earnings deduction, or
 - Is subject to a claim for the seafarer's allowance.

Transborder Relief is calculated as follows:

- a) Calculate the Irish income tax liability which would have been payable in a tax year under the normal rules, ignoring any foreign tax paid,
 - b) The amount of income tax payable shall not exceed the specified amount as determined by the following formula:

Total Irish tax liability as per x Total income excluding income from foreign employment
as per (a) above Total income

Income from a foreign employment received by an Irish resident and domiciled individual is taxable under Schedule D (where the employment is exercised outside of Ireland), hence such individuals are a chargeable person and are required to complete a full self-assessment tax return in Ireland each year.

USC does not apply to the amount of income from the foreign employment which qualifies for Transborder Relief. However, USC does apply to any additional income the individual may have.

Transborder workers do not typically pay PRSI in the State as they are subject to social insurance in the country in which the employment is exercised.

Example 10

Example 20 Sean is single and is resident in Ireland for tax purposes. He is employed in Northern Ireland. The euro equivalent of his annual salary and tax paid in the U.K. is €50,000 and €7,137 respectively. Sean meets all the requirements for Transborder Relief. Sean had a net rental profit of €10,000 from a rental property in Ireland. Calculate Sean's income tax liability in Ireland using Transborder Relief.

Solution 10

Firstly, we need to calculate Sean's income tax liability in Ireland as follows:

<i>Firstly, we need to calculate Sean's income tax liability in Ireland as follows:</i>	
<i>UK income</i>	€50,000
<i>Irish rental income</i>	<u>€10,000</u>
<i>Total income</i>	€60,000
 <i>Single person SRCOP</i>	 €40,000
 <i>Gross tax:</i>	 €40,000 @ 20% =
	<u>€8,000</u>
	€20,000 @ 40% =
	<u>€8,000</u>
	€16,000
 <i>Less tax credits:</i>	 <i>Single Person</i>
	€1,775
	<i>PAYE</i>
	<u>€1,775</u>
	€3,550
 <i>Total Irish tax liability</i>	 €12,450
<i>Less credit for UK tax</i>	€7,137
<i>Net tax liability (without transborder relief)</i>	€5,313

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Transborder Relief restricts the tax payable to:

$$\text{Total Irish tax liability} \times \frac{\text{Total income excluding income from foreign employment}}{\text{Total income}}$$

$$€12,450 \times €10,000 / €60,000 = €2,075$$

Transborder Relief has reduced Sean's liability from €5,313 to €2,075, resulting in a saving of €3,238.

It is only the Irish rental income of €10,000 which is liable to USC. As this amount does not exceed the USC exemption threshold, USC is not payable.

Example 11

Mike and Aine are married and resident in Ireland for tax purposes. Mike is employed in Northern Ireland and the euro equivalent of his annual salary and tax paid in the U.K. is €30,000 and €3,145 respectively. Mike meets all the requirements for Transborder Relief. Aine is employed in Ireland and earns €60,000. Calculate their joint income tax liability in Ireland using Transborder Relief.

Solution 11

Mike's UK income		€30,000
Aine's Irish Income		€60,000
Total income		€90,000
Married SRCOP	€49,000 + €31,000 =	€80,000
Gross tax:	€80,000 @ 20% =	€16,000
	€10,000 @ 40% =	<u>€4,000</u>
		€20,000
Less tax credits:	Married Couple	€3,550
	PAYE x 2	<u>€3,550</u>
		€7,100
Total Irish tax liability		€12,900
Less credit for UK tax		<u>€3,145</u>
Net tax liability (without transborder relief)		€9,755

$$\text{Transborder Relief restricts the tax payable to: } €12,900 \times €60,000 / €90,000 = €8,600$$

Transborder Relief reduces Mike and Aine's tax liability from €9,755 to €8,600, resulting in a saving of €1,155.

It is only Aine's income of €60,000 which is liable to USC.

10. TransBorder Workers and Medical Cards

Transborder workers can fall into several categories, two of the most common of which are "Posted Workers" or "Frontier Workers". Posted workers are those who are assigned by their employer to work in another EU state for a period of up to 24 months and a Frontier worker is someone who is resident in one Member State and works in another Member State and returns home at least once a week.

Posted workers are subject to the Social Insurance rules in their home country for the first 2 years of an assignment to another EU State and retain their rights acquired through their home country which includes access to healthcare services. Where a posted worker is not subject to Irish PRSI, the HSE will issue a full medical card to that person. A Form A1 and a Form S1 should be presented to the HSE to obtain a medical card. Revenue will also accept a valid Form A1 and S1 as evidence that the individual is entitled to a full medical card. Posted workers are covered in more detail in the chapter entitled Taxation of Inbound Assignees.

Frontier workers who are resident in one EU Member State and travel to work in another EU Member State on a daily or weekly basis are generally subject to Irish Social Insurance in the country in which they work. While the UK (including Northern Ireland) is no longer part of the EU, an Irish or British citizen's right to healthcare in each other's jurisdiction is protected under the Common Travel Area. Hence, Northern Ireland citizens who commute to work in Ireland on a daily or weekly basis continue to be regarded as a frontier worker. Such individuals are entitled to apply to the HSE for a medical card. They will have to satisfy a means test in the same manner as any other applicant. Hence, Northern Ireland residents who commute to work in Ireland are subject to the standard rates of USC unless they hold a medical card, which qualifies the holder for the reduced rates of USC assuming their aggregate earnings for USC purposes does not exceed €60,000.

The situation is different for frontier workers who reside in Ireland and travel to work in Northern Ireland/UK or another EU Member State on a daily or weekly basis. A person who is resident in Ireland and employed elsewhere in the EU is automatically entitled to a medical card from the HSE on production of a Form E106. A Form E106 is issued in the Member State where the person is insured for the social insurance purposes. Assuming his aggregate income for USC purposes does not exceed €60,000, he is liable to the reduced rates of USC.

However, if the frontier worker is also subject to Irish social insurance (e.g. in receipt of a contributory payment from the Department of Social Protection (DSP) or is liable to pay PRSI in Ireland), he will **not** be automatically entitled to a medical card and must satisfy the means test. A dependent spouse of the frontier worker will also be automatically entitled to a medical card unless he/she is subject to Irish social insurance.

11. Seafarer Allowance

An employee (seafarer), who is resident in the State, carries out his duties of employment on board a sea going ship, may qualify for a Seafarer Allowance. A sea going ship is a ship that is registered in the shipping register of a European Member State and is used solely for the purposes of carrying passengers or cargo for reward. It does not include a fishing vessel. Seafarers on direct voyages to/from the UK may qualify for this allowance.

The conditions to qualify for this allowance are as follows:

- The seafarer must be absent from the State for at least 161 days in the tax year (an individual will be deemed to be absent from the State for a day if they are absent at midnight), and
- The employment must be performed wholly* on board a sea going ship in the course of an international voyage, and
- The voyage must begin and/or end in a port outside the State (a rig, platform or other installation situated in any maritime area is regarded as a port),
- The seafarer's employment must not be funded by the State (i.e. it does not apply to State employees or employees of State-sponsored bodies or statutory boards).

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* Incidental duties which are not performed on board the ship will be deemed to have been carried out on board the ship.

Where the qualifying conditions are met, the individual can avail of a tax allowance of €6,350 at his marginal rate of tax. The allowance can only be offset against income from the seafaring employment (i.e. the taxable income will be reduced by €6,350). For an individual who is taxable at the higher rate, this would result in a tax refund of €2,540 in the current tax year (€6,350 @ 40%).

When making the claim, the employee may be required to submit confirmation from his employer to support the claim. This relief can be claimed as an alternative to Transborder Relief and the individual must not have claimed Split Year Relief in respect of that tax year.

12. Taxation of Employees working in the State for a Foreign Embassy

Salaries of individuals working in Ireland for Diplomatic Missions are chargeable to tax in the State unless the salaries are relieved from the charge to tax under the **Diplomatic Relations and Immunities Act 1967** and the “Governmental Services Article” of the relevant Double Taxation Agreements. In general, individuals from foreign jurisdictions working in Ireland in the embassy of their respective countries are not liable to Irish tax.

Locally engaged staff who are resident in Ireland and employed directly by the embassy in Ireland have a liability to pay Irish tax (e.g. cleaners, office administrators, etc.). The embassy may deduct tax, USC and PRSI through the PAYE system on a voluntary basis by registering with Revenue as an employer and requesting an RPN for each local employee and submitting the payroll details to Revenue on a Payroll Submission.

Where the embassy chooses not to operate the PAYE system, the employee is deemed to be a chargeable person and is responsible for declaring his income through self-assessment tax return. However, the individuals are entitled to claim the PAYE tax credit. Where the embassy chooses not to operate PAYE on a voluntary basis, the embassy remains responsible for deducting PRSI from the individual and paying the employee and employer PRSI directly to the DSP through the special collections system.

The salaries of individuals working on behalf of Ireland for Diplomatic Missions abroad are chargeable to tax in Ireland as they hold a ‘Public Employment’ and they continue to pay tax, USC and PRSI on their salaries.

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Taxation of Inbound Assignees

- 1. Foreign Employments exercised in Ireland**
 - 2. PAYE Obligations**
 - 3. Temporary Assignees – Release from Obligation to Operate PAYE**
 - 4. Bonuses**
 - 5. Subsistence Payments**
 - 6. Travel Expenses**
 - 7. Pension Contributions**
 - 8. Special Assignee Relief Programme**
 - 9. Exchange Rates**
 - 10. PRSI for Employees Posted to Ireland on Temporary Assignments**
 - 11. Residence and Employment Permits**
-

1. Foreign Employment exercised in Ireland

Income from employments which is attributable to the performance of duties in the State is within the charge to tax under Schedule E. Such income is considered emoluments and is taxable under the PAYE system (i.e. through payroll). This includes income from a foreign employment which is exercised in Ireland. It is important to remember that domestic legislation is designed to deal with all individuals, including those who are resident in Ireland, those resident in a country with which Ireland has a Double Taxation Agreement (DTA) and those resident in a non-DTA country.

An employee, who holds a foreign employment but exercises the duties of that employment wholly or partly in Ireland, is subject to PAYE on the amount of employment earnings, including benefits-in-kind, attributable to duties performed in Ireland, subject to any relieving measures contained in a DTA.

Where necessary, a foreign employer is required to register as an employer in Ireland for PAYE purposes, or alternatively they can engage a sister company or an agent to carry out the relevant duties on their behalf.

Where necessary, the employee is required to obtain a PPS Number (PPSN) from the Department of Social Protection. Once he has obtained his PPSN, he should register his employment on the Jobs and Pensions service which is available in myAccount which will result in a Tax Credit Certificate being issued to the employee and a Revenue Payroll Notification (RPN) being issued to the employer.

The term “shadow payroll” is often used to describe the situation where a company or agent is required to operate the PAYE system on a payment that they are not actually making (i.e. although an employee may remain on the home country payroll of the foreign employer, PAYE must still

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be operated where the earnings arise from duties performed in Ireland). Where earnings are liable to Income Tax, they are also liable to USC. It is possible for an employee to be subject to PAYE in Ireland while also being subject to payroll taxes in his home country.

Where an employee is in receipt of a Form A1 (also known as an A1 Portable Document) or a Certificate of Coverage issued from another country, no PRSI is payable in Ireland for the specified duration. Social Insurance is paid in the home country instead.

1.1 Foreign Employment wholly exercised in Ireland

Where the employment is wholly exercised in Ireland, all of the income from that employment is chargeable to tax in Ireland under the PAYE system.

Example 1

David, an American national is employed by a US based company. He has been seconded to an Irish subsidiary company in Dublin where he performs all of his duties of employment. His US employer continues to pay his gross salary, the equivalent of €100,000 in the US. Calculate the amount of his foreign earnings that are liable to Income Tax and USC.

Solution 1

As all of the duties of his employment are performed in Ireland, his full salary of €100,000 is liable to Irish income tax and USC through the PAYE system. It is possible that this individual would qualify for SARP relief which is covered later in this chapter. It will also be liable to PRSI unless David obtained a Certificate of Coverage from the US authorities which will exempt him from PRSI.

1.2 Foreign Employment partly exercised in Ireland

Where there is certainty as to the amount of the earnings which are attributable to the duties performed in Ireland, PAYE should be applied to this element.

For example an employee may work 4 days per week in Ireland and 1 day a week in the UK, in which case 4/5^{ths} of his pay is taxable in Ireland under the PAYE system; or an employee may work in Ireland for 75% of the year and work in the US for the remaining 25% of the year, in which case 75% of his pay is taxable in Ireland. Where there is certainty regarding the pattern of the work, Revenue suggests the following method of apportionment be used:

$$\text{Foreign Employment Income} \quad \times \quad \frac{\text{Total work days in the State}}{\text{Total work days in a year (260 days)}}$$

Example 2

Jane, an American national is employed by a US based company. She spends 25% of the year (65 days) working in the US and the remaining 75% of the year (195 days) working in the Irish subsidiary company in Limerick. Jane is tax resident in Ireland but US domiciled. Her US employer continues to pay her salary, the equivalent of €150,000, in the US. Calculate the amount of Jane's earnings that are liable to PAYE and USC.

Solution 2

As not all of the duties of Jane's employment are performed in Ireland, an apportionment must be made based on the number of days she performs the duties of her employment in Ireland as follows:

$$€150,000 \quad \times \quad 195 \text{ days} / 260 \text{ days} = \quad €112,500$$

Therefore, €112,500 of Jane’s salary is subject to PAYE and USC in Ireland. Jane should obtain a Certificate of Coverage from the US social insurance authorities which would exempt her from PRSI. As Jane is US domiciled, she is subject to tax on the remittance basis which means that the balance of her income (i.e. €37,500) will only be taxable in Ireland where it is remitted to Ireland.

If there is any difficulty in ascertaining the amount of income from the foreign employment which is attributable to the duties performed in Ireland (e.g. commission based employment or unpredictable work), a submission outlining the circumstances should be made to Revenue who will advise accordingly. If the income attributable to duties performed in Ireland is not readily identifiable, the employer can be held liable for the operation of Income tax on the total income where prior Revenue approval has not been obtained.

2. PAYE Obligations

Income from employments which is attributable to the performance of duties in the State is within the charge to tax under Schedule E, subject to any relieving measures available under a DTA. The legislation provides Revenue with a number of options when it comes to the operation of PAYE on income from a foreign employment which is attributable to duties performed in Ireland which are outlined as follows:

2.1 Payment by an Intermediary

Generally, the person who is actually paying the wages to the employee is responsible for the operation of the PAYE system. This rule applies even where the wages are paid by an intermediary acting on behalf of an employer. An intermediary includes any person or business acting on behalf of and at the expense of the employer, or a person connected to the employer. However, the employer is ultimately responsible for the operation of PAYE where the intermediary fails to do so.

2.2 Relevant Person

Where an employee works for a person, referred to as a “relevant person”, who is not his immediate employer, the relevant person can be held liable for the operation of Income Tax on the employee’s earnings attributable to duties performed in Ireland (even though the relevant person does not actually pay the wages) where the employee’s actual employer or intermediary acting on the employer’s behalf fail to do so.

2.3 Mobile Workforce

Where a person (a “relevant person”) enters into a contract to engage the services of employees of another person (the “contractor”) and it appears to Revenue that the contractor is unlikely to operate PAYE on the earnings attributable to the duties performed in Ireland, Revenue can direct that the relevant person is responsible for the operation of the PAYE system on the earnings even though the earnings are not paid by the relevant person.

2.4 Reporting Requirements

Employers are required to submit statutory payroll information to Revenue in a Payroll Submission on or before the day the employee is paid. Where the employer has an obligation to withhold payroll taxes in both the home country and Ireland, a shadow payroll will typically be operated in Ireland in respect of the income which is taxable in Ireland.

Where the pay date in the foreign country does not align with the Irish pay date, the Payroll Submission can be aligned with the Irish employer’s next pay date for equivalent Irish employees. Employers should use a best estimate of the amount which is taxable based on the number of days

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an employee works in Ireland. If there are more (or less) workdays than originally estimated, the pay (i.e. income attributable to the performance of duties in Ireland) should be amended in the following Payroll Submission.

3. Temporary Assignees – Release from Obligation to operate PAYE

Under domestic tax legislation, income arising from an employment exercised in Ireland is taxable under the PAYE system. Taking this point in isolation, if an employee of a foreign employer was to perform 1 day's work in Ireland, the foreign employer would be required to register as an employer in Ireland and operate PAYE on the payment due for this 1 day's work which would cause a significant administrative burden.

To alleviate this administrative burden, since 1st January 2020, Revenue will grant a foreign employer a release from the obligation to operate PAYE in the following circumstances:

1. Short term business visits of up to 30 workdays in a tax year, whether from a DTA or non-DTA country.
2. Short term visits greater than 30 workdays and not more than 60 workdays in a tax year from a DTA country.
3. Short term visits greater than 60 workdays and not more than 183 days in a tax year from a DTA country, where dispensation from the requirement to operate the PAYE system has been issued.

The residence rules define “a day” as a day during any part of which an individual is present in Ireland.

A workday is a day during any part of which an individual performs work in Ireland.

When looking at whether a PAYE obligation arises, each tax year should be considered in isolation.

3.1 Short term visits for no more than 30 workdays in a tax year, whether from a DTA or non-DTA country

Where a temporary assignee of a foreign employer is not resident in Ireland, performs duties in Ireland for no more than an aggregate of 30 workdays in a tax year, there is no requirement for PAYE to be operated in respect of the income attributable to such duties. This provision applies whether the assignee is resident in a DTA or non-DTA country.

Where this condition is satisfied, there is no requirement for the foreign employer to seek Revenue approval.

Where the assignee exceeds an aggregate of 30 workdays in the State in a tax year, and an obligation to operate PAYE exists, it must be operated from the commencement of employment.

Where an employee from a non-DTA country performs his duties in Ireland for more than 30 workdays in a tax year, the employer is obliged to operate PAYE from the commencement of the assignment.

Example 3

Sandro was assigned to Ireland for a total of 10 workdays from Brazil (a non-DTA country) by his foreign employer. There is no requirement to operate PAYE as the total workdays in the year do not exceed 30.

Example 4

Miguel was assigned to Ireland for a total of 40 workdays from Brazil (a non-DTA country) by his foreign employer. A PAYE obligation exists as the total workdays in the year exceeds 30. The foreign employer is required to register as an employer in Ireland and operate PAYE from the commencement of the assignment.

3.2 Short term visits greater than 30 workdays and no more than 60 workdays in a tax year from a DTA Country

Where a temporary assignee, of a foreign employer, is non-resident in Ireland and is resident in a country with whom Ireland has a DTA, performs duties in Ireland for no more than an aggregate of 60 workdays in a tax year, there is no requirement for PAYE to be operated in respect of the income attributable to such duties.

Where this condition is satisfied, there is no requirement for the foreign employer to seek Revenue approval.

Where the assignee exceeds an aggregate of 60 workdays in the State in a tax year, PAYE must be operated from the commencement of employment, unless the employer has applied for a dispensation from the operation of PAYE on the basis that the employee will not spend 183 days or more in Ireland during this year (see below). Each year should be considered on a standalone basis.

Example 5

Hans was assigned to Ireland from Germany (a DTA country) for a total of 50 workdays and he continues to be paid on a German payroll by his German employer. He is tax resident in Germany and is not tax resident in Ireland.

There is no requirement for Hans's employer to operate PAYE as the total workdays in the year do not exceed 60. There is no requirement to seek Revenue approval.

3.3 Short term visits from a DTA Country for more than 60 workdays but less than 183 days in a tax year

Under Article 15(2) of DTA agreements, where an individual is tax resident in another DTA country and an obligation exists to deduct tax at source from the individual's wages under the PAYE system and foreign tax deduction system simultaneously, the obligation to grant relief in respect of the double taxation rests with the country where the individual is tax resident.

However, to alleviate the burden of double taxation, upon receipt of an application for a dispensation from the obligation to operate PAYE for a temporary assignee, Revenue will release a foreign employer from his obligation to operate PAYE where a temporary assignee of a DTA country:

- a) Is present in Ireland for more than 60 days but less than 183 days in a tax year (i.e. he is not tax resident in Ireland during the year), and
- b) Is paid by an employer who is not resident in Ireland, and

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- c) The remuneration is not borne by a permanent establishment (PE) which the employer has in Ireland.

Note: Refer to the chapter entitled Resident in Ireland for Tax Purposes for more information on (b) and (c) above. Revenue deems the term “paid” to mean the physical transfer of funds to the employee. Where the costs of the assignment are recharged to the Irish PE, condition (c) above is not met. Management charges (with a mark-up) are not considered recharges for the purpose of interpreting this condition.

Example 6

Marco was assigned to Ireland from France (a DTA country) for a total of 80 workdays and he continues to be paid on a French payroll by his French employer. He is tax resident in France and is not tax resident in Ireland. His employer does not have a PE in Ireland.

The employer may seek approval from Revenue to be released from its obligation to operate PAYE on the emoluments attributable to the employment exercised in Ireland as the above conditions are met. Note: PAYE must be operated in the absence of any application being made to Revenue.

Example 7

Shane is tax resident in the UK and employed by IT Ltd in the UK. IT Ltd secured a contract with BIO Ltd in Ireland which will result in Shane being assigned to Ireland for approximately 130 days to carry out an installation project. IT Ltd have no PE in Ireland.

IT Ltd may seek approval from Revenue to be released from its obligation to operate PAYE on Shane’s emoluments attributable to his employment exercised in Ireland as the above conditions are met. Note: PAYE must be operated in the absence of any application being made to Revenue.

Example 8

Pedro is tax resident in Spain and employed by Repsol in Spain. Repsol has an office in Ireland. Pedro was temporarily assigned to work in the Irish office and will spend 100 days in Ireland this year. Pedro will continue to be paid by his Spanish employer, but the cost of his assignment will be charged to the Irish office.

As the cost of Pedro’s assignment is charged to the Irish office (PE), condition (c) above is not met, hence Revenue will not release the employer from his obligation to operate PAYE. In this case, PAYE should be operated on the emoluments attributable to the duties performed in Ireland.

Note: If the Spanish entity was to charge the Irish entity a management charge (as opposed to a recharge of the costs) for the work carried out in Ireland, condition (c) above could be met.

3.4 Summary of PAYE Obligations

The following is a summary of the PAYE obligations of a foreign employer in respect of employees who temporarily performs the duties of their employment in Ireland, depending on whether the employee is resident in a DTA or non-DTA country.

Presence of employee in Ireland	DTA Country	Non-DTA Country
Less than 30 workdays in the tax year	No PAYE obligation	No PAYE obligation
Between 30 and 60 workdays in the tax year	No PAYE obligation	PAYE obligation
More than 60 workdays but less than 183 days in the tax year	PAYE obligation in the absence of a PAYE Dispensation	PAYE obligation
More than 183 days in the tax year	PAYE obligation	PAYE obligation

3.5 Application for PAYE Dispensation

As outlined above, where a foreign employer requires Revenue approval to be released from his obligation to operate PAYE, the application must be made within 30 days of the employee's arrival in Ireland and the following conditions must be satisfied.

The foreign employer must register in Ireland as an employer for PAYE purposes, or if applicable, supply the details of any intermediary or relevant person who is paying the wages.

Note: where the employee is paid by a connected entity in the State or the connected entity takes responsibility for complying with the PAYE obligations on behalf of the foreign employer, there is no requirement for the foreign employer to register as an employer in Ireland. However, the foreign employer must supply Revenue with its own details (name and address), the employer registration number of the connected entity, and if applicable, the name and address of the relevant person.

The employer's application must confirm that the conditions of Article 15 (2) of the relevant DTA are met (see paragraph 3.3 above and the chapter entitled Residence in Ireland for Tax Purposes).

The foreign employer should seek approval in writing from Revenue within 30 days after the date the assignee takes up duties in the State. Pending written approval from Revenue, PAYE need not be operated if all other conditions are met. Revenue will not penalise an employer for failure to give timely notice where it was not expected or readily apparent that the individual will be present in the State for more than 60 workdays.

An application from a foreign employer may cover more than one employee. A new application will have to be made in respect of each tax year. Applications should be submitted to the relevant Revenue district dealing with the tax affairs of the company. Where the employer's tax affairs are dealt with by Large Cases Division (LCD), applications should be sent to: largecasesdiv@revenue.ie.

It should be noted that PAYE should be operated in respect of all employees posted to Ireland for a period of 183 days or more in a tax year.

4. Bonuses

Bonuses are a common form of remuneration and can be based on numerous factors. Some bonuses are fixed and are paid regardless of the employee's or company's performance whereas other bonuses are calculated based on either the employee's or company's performance or a combination of both.

In relation to inbound assignees, the following information deals **only** with the tax treatment of a bonus based on the individual performance of the employee as determined by his annual review.

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Finance Act 2017 changed the basis of taxation for PAYE employees from an earnings basis to a payments basis since 1st January 2018. This has the effect of taxing payments when they are made regardless of when they were earned. This causes a problem for inbound assignees as it means that a bonus which is paid to the employee while he is temporarily assigned to Ireland will be taxed in Ireland even though this bonus may have related to a period where he performed these duties outside of Ireland. Similarly, a bonus maybe paid following the individual's departure from the State (i.e. following repatriation) where all or part of that bonus may be referable to duties performed in the State.

Under the terms of most DTAs, the taxing rights of an employee belong to the country of residence of the employee unless the duties of employment are performed in Ireland. Where the duties are exercised in Ireland, the taxing right exists only so far as the duties are performed in Ireland. This is clearly different to the amounts paid while working in the State.

As such, Revenue accept that such bonus payments should be taxed on the earnings basis as opposed to the payments basis. In some situations this may mean ignoring the bonus payment completely but on other occasions the bonus would have to be taxed through the PAYE system in the first instance and the employee would then claim any tax relief by completing an Income Tax return.

Example 9

John is employed by a UK company and is assigned to work in a subsidiary company in Ireland for 2 years from January 2023. He will continue to be paid in the UK. In 2022, his duties of employment were performed in the UK. John returned to the UK at the end of December 2024.

Following his annual review, he was paid a bonus of £15,000 in April 2023 which related to his performance in 2022, he was paid a bonus of €20,000 in April 2024 which related to his performance in 2023, and he was paid a bonus of €20,000 in April 2025 which related to his performance in 2024. What is the taxation treatment of these bonuses?

Solution 9

As John's duties of employment are performed entirely in Ireland in 2023, his employment income is taxable through the PAYE system. Either the UK or the subsidiary company must register as an employer if not registered and deduct tax and USC on the Euro equivalent of John's salary.

Even though the performance bonus is paid in 2023, it can be ignored for PAYE purposes as it was earned during a period when his duties were performed outside the State.

The bonus paid in April 2024 is liable to PAYE at the date of payment as this bonus is attributable to duties performed in Ireland in 2023.

The bonus paid in April 2025 is liable to PAYE at the date of payment as this bonus is attributable to duties performed in Ireland in 2024. Although John returned to the UK at the end of 2024, the bonus is still taxable in Ireland as it relates a period where John exercised his duties in Ireland. As a cessation date was most likely entered on the Payroll Submission in December 2024, the payment of this bonus should be treated as a post-cessation payment in April 2025.

As the bonus was earned in 2024, it should be included on John's Income tax return for 2024. This will mean that a refund of tax paid in 2025 will need to be sought and a payment of tax due in respect of 2024 will need to be made. Both returns could be filed together and the amounts

netted off. This treatment ensures that such payments are dealt with in line with OECD commentary on Article 15.

5. Subsistence Payments

Revenue is willing to accept that tax-free subsistence payments may be paid or reimbursed for the first 12 months of a temporary assignment provided that the period of assignment in Ireland does not exceed 24 months, subject to the following conditions:

- There is an intention that the temporary assignee will at the end of the assignment return to work at the foreign location from which he was assigned,
- The temporary assignee holds employment with a non-resident employer and prior to coming to work in Ireland was employed outside Ireland for a period of not less than 3 months by that employer.

A temporary assignee does not include an individual who is recruited to work in Ireland or in the normal course of his duties is posted or transferred from county to country.

The reimbursement of expenses may be by way of either vouched expenses (reasonable accommodation and meals) or a flat rate.

With regard to hotel accommodation, reasonable accommodation includes accommodation for an assignee for a 12 month period. Where a spouse and children accompany an assignee during the temporary assignment, reasonable accommodation includes hotel accommodation for the spouse and children for the first month only to facilitate the procurement of rented accommodation.

With regard to rented accommodation, reasonable accommodation includes vouched rent, rental of furniture and payment of utilities (e.g. light and heat) which would normally be payable by a tenant. Where an assignee is accompanied by a spouse and children, reasonable accommodation includes rental of residential accommodation which is suitable for an assignee and his spouse and children.

Flat rate reimbursement of expenses free of tax for a temporary assignee must not exceed the amounts below:

Period of Assignment	Allowable Tax Free Subsistence
First 14 nights of assignment	Normal Rate - €167 per night or VA Rate for Dublin
Next 14 nights of assignment	Reduced Rate - €150.30 per night
Next 28 nights of assignment	Detention Rate - €83.50 per night
Remainder of assignment (up to a maximum of 12 months)	Vouched expenses subject to a maximum of 3 nights subsistence per week at the normal rate

If the employee can secure accommodation in Dublin within the standard overnight rate of €167 then this rate should be used. If the employee cannot secure accommodation within the standard rate, the employer is permitted to use the VA Rate. The VA Rate consists of the vouched cost (i.e. a receipt must be provided) of accommodation, up to a maximum of €167, plus the appropriate day rate for meals of €39.08.

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Vouched Accommodation Rate – For use in Dublin Only		
Accommodation		Meals
Vouched cost of accommodation up to a maximum of €167.00	Plus	€39.08

6. Travel Expenses

The following travel expenses may be paid tax free for temporary assignees:

- Vouched cost of the journeys to and from the State at the commencement and cessation of the temporary assignment.
- Vouched cost of one return trip per year for a maximum of 2 years to the home location (to include spouse or civil partner and children). Where the assignee's spouse or civil partner and children do not accompany them on the temporary assignment, the cost of one trip per year for them to the State.

7. Pension Contributions

Where employment income and BIK, in so far as the employment is exercised in Ireland, is subject to PAYE, any contributions made by an employer into a foreign pension scheme is a taxable emolument, except where:

- a) Such charge is relieved under the terms of a DTA (e.g. subject to the conditions specified in Article 17A of the Ireland-UK DTA, the DTA provides for tax relief in respect of employee contributions paid into an approved pension scheme in the UK, where the employee is exercising his employment and taxable in Ireland, subject to the pension contribution limits in Ireland, and vice versa. It also provides that any employer contribution will not be a taxable emolument for the employee) **or**
- b) The emoluments of the employment are not chargeable to tax in the State; or the employer pension contributions are made to an approved scheme; a statutory scheme; or a scheme set up by a Government outside the State for the benefit of its employees, **or**
- c) Migrant member relief applies, **or**
- d) The conditions described in paragraph 7.2 below apply.

7.1 Migrant Member Relief

Migrant member relief applies to an individual (relevant migrant member) who comes to the State and who wishes to continue to contribute to a pre-existing "qualifying overseas pensions plan" in another EU Member State. It covers occupational pension schemes and personal pension schemes but excludes any state social security scheme.

Qualifying overseas pension plan means an overseas pension plan that:

- Is established for the sole purpose of providing retirement benefits similar to those approved in the State,
- Qualifies for tax relief on contributions under the law of the EU Member State in which it is established, and
- In relation to which the migrant member of the plan has irrevocably instructed the administrator of the plan to provide Revenue with any information that they may require in relation to the plan.

A "relevant migrant member" is an individual who:

- Is tax resident in the State,
- Was a member of the plan on taking up residence in the State,

- Was a resident of another EU Member State at the time he or she first became a member of the plan and was entitled to tax relief on contributions under the law of that Member State,
- Was resident outside of the State for a continuous period of 3 years immediately before becoming tax resident in the State,
- Is a national of an EU Member State or, if not, was resident in an EU Member State (other than Ireland) immediately before becoming a resident of Ireland.

Where an individual does not satisfy the 3 year test but all other conditions are met, Revenue has the discretion to treat an individual as a relevant migrant member.

Where the above qualifying conditions are met, tax relief may be granted in respect of any contributions paid. In order to claim relief the individual should complete part 1 of the Overseas Pension 1 form www.revenue.ie/en/life-events-and-personal-circumstances/documents/claim-for-migrant-member-relief-form.pdf

The plan administrator should complete part 2 of the form and provide a “certificate of contribution” setting out contributions made by the individual to the plan and, where relevant, any contributions made by his or her employer in the State. The completed form should be submitted to the individual’s local Revenue office. Tax relief is due at the individual’s marginal rate of tax.

In the case of an individual who is taxed under the PAYE system, the relief will be shown on the employee’s Tax Credit Certificate in the year of claim where the employee makes the pension contribution directly to the pension scheme. Alternatively, where the contributions are administered through payroll, an employer is authorised to operate the net pay arrangement (i.e. the employee contribution can be deducted from the employee’s gross pay before the calculation of income tax). Relief is subject to the same age percentage limits and earnings limit as apply to contributions to approved pension plans in the State.

7.2 Contributions to Overseas Pension Schemes

Revenue will

- Treat contributions made by an employer to an overseas pension scheme, for the benefit of an employee, as not being taxable, and
- Allow tax relief for contributions made directly by seconded individuals into foreign pension schemes, in genuine cases where:
 - (a) The employee
 - Has been seconded by a foreign company to work in Ireland for that company or for a company which is connected to the foreign company;
 - Was, prior to coming to work in Ireland, employed outside of Ireland for a period of not less than 18 months by the foreign company (or a foreign company connected to that company);
 - Is either not Irish domiciled or, being an Irish citizen, is not ordinarily resident in Ireland at the time the pension contributions are made;
 - Had, prior to coming to work in Ireland, been making contributions to the foreign pension scheme referred to in (c) below for a period of not less than 18 months; and
 - Is not resident in the State for a period of more than 5 years (but see note below);
 - (b) The foreign employer
 - Is resident for tax purposes in an EU member state or in a country with which Ireland has a DTA;

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- Has, prior to the individual coming to work in Ireland, been making contributions to a foreign pension scheme on behalf of the employee for a period of not less than 18 months;
- (c) The foreign pension scheme is a statutory scheme in a State or country mentioned in (b) above, other than a State Social Security Scheme, or is a scheme in respect of which tax relief is available in such a State or country; and
- (d) Both the employer and employee contributions comply with the rules of that foreign pension scheme.

Note: Where an individual is resident in Ireland for a period of more than 5 years, written permission of the local Revenue office will be required for the continuation of the above treatment of pension contributions beyond a period of 5 years.

8. Special Assignee Relief Programme

Finance Act 2012 introduced a Special Assignee Relief Programme (SARP) to reduce the cost to foreign employers of assigning key employees from abroad to take up positions in the Irish based operations of their organisation and can be claimed for a maximum period of 5 consecutive years. The SARP provisions provide for income tax relief where an assignee's relevant income exceeds the lower limit and subject to an upper limit.

To qualify for SARP relief an employee's annual relevant income must be greater than:

- €100,000 for those arriving in Ireland in 2023, 2024 or 2025, or
- €75,000 for those who arrived in Ireland prior to 2023. This limit applies for the 5 years that SARP is available.

SARP relief is subject to an upper income limit of €1 million which applies as follows:

- For employees who arrived in Ireland on or after 1st January 2019, the €1m limit applies for 2019 and subsequent years, and
- For employees who arrived in Ireland on or before 31st December 2018, the €1m limit applies in 2020 and subsequent years.

Prior to 2019, an upper income limit did not apply.

Relevant income for SARP purposes is defined as the individual's total income from that employment, excluding the following payments:

- Reimbursement of expenses or the payment of travel and subsistence rates subject to Revenue limits,
- The notional value of a BIK,
- Bonus payments, contractual or otherwise,
- Share options or other share based remuneration,
- Termination payments,
- Restrictive covenant payments.

The following payments which can be made by an employer will not give rise to a tax, USC or PRSI liability for the employee and are not part of the employee's relevant income for SARP:

- Payment for one return trip home per year for the employee, his spouse or civil partner and any children,
- Payment of up to €5,000 towards the cost of primary or secondary education for any children of the employee or his civil partner.

To qualify for tax relief under SARP:

- The employee must be assigned to work in Ireland from a DTA country,
- The employee must have been working for their employer for 6 months prior to being assigned to Ireland and all duties of the employment were performed outside of Ireland,
- The employee must be assigned to Ireland in any of the tax years 2012 to 2025,
- The assignment must be for a minimum of 12 months,
- The employee must hold a valid PPSN,
- There is no restriction on the employee performing employment duties outside the State,
- The employee must be tax resident in the State for all years for which relief is claimed, and
- The employee must not have been tax resident in Ireland in the 5 years prior to his arrival.

For SARP relief to be granted to employees, employers are required to submit a Form SARP 1A to Revenue within 90 days following the employee's arrival in the State. This time period is to facilitate individuals obtaining their PPSN. Since 1st January 2023, the employee must obtain a PPSN from the DSP within 90 days of arriving in the State (if he has not already done so) to facilitate the submission of the Form SARP 1A. Failure to meet the PPSN requirements on time will jeopardise the employee's entitlement to the relief for the duration of his or her contract. *A copy of the SARP 1A Form is included at the end of this chapter.*

SARP grants tax relief by reducing a qualifying employee's income by the "specified amount". The specified amount is calculated as follows:

$$(A - B) \times 30\%$$

Where: **A:** is the amount of the employee's income from that employer which is subject to tax in the State after deduction of a qualifying pension contribution to a Revenue approved company pension, personal pension, PRSA or overseas pension plan, subject to the upper income limit as outlined above.

B is €100,000 for those arriving in Ireland in 2023, 2024 or 2025; €75,000 for those who arrived in Ireland prior to 2023. The examples in this chapter are based on the €100,000 threshold.

Example 10

Akito Nakamura was assigned to Ireland from 1st January 2023 on a temporary assignment from Japan and fulfils the conditions of SARP. He receives the following remuneration package:

<i>Annual Salary</i>	<i>€175,000</i>
<i>Annual Bonus</i>	<i>10% of salary</i>
<i>Company Car</i>	<i>Notional value of €15,000</i>
<i>One return trip per year to Japan valued at €2,500</i>	

Calculate how much relief he will obtain under SARP in respect of a full tax year, and the amount of his taxable income.

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Solution 10

Total taxable income:	Salary	€175,000
	Bonus	€17,500
	Company Car	€15,000
		€207,500

Relevant income:	Salary:	€175,000
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As relevant income exceeds €100,000, he qualifies for SARP relief.

Specified amount:	(€207,500 - €100,000) x 30% =	€32,250
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Revised taxable income:	€207,500 - €32,250 =	€175,250
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Assuming tax was deducted on the full amount of the earnings through the payroll system, a tax refund of €12,900 (€32,250 x 40%) could be claimed following the end of the tax year. Alternatively, Revenue may authorise the relief to be granted through payroll on a real-time basis throughout the year. Where approved, Revenue permits an employer to make a payment equal to the specified amount (i.e. €32,250 in the above example) free of income tax, with an equal amount being paid each pay period. The employer is only required to make an application to grant SARP relief through payroll once. When granted, it applies for the duration of the assignment subject to a maximum of 5 tax years assuming all conditions continue to be met.

Normal USC and PRSI rules apply to the full amount of earnings (i.e. €207,500 in the above example). Where the employee holds a Form A1 or Certificate of Coverage issued by another country, no PRSI is payable in Ireland for the specified duration. Otherwise, PRSI must be applied to the total income.

Note: if the salary in the above example was only €90,000, Akito would not have qualified for SARP relief as his relevant income did not exceed €100,000.

With regard to the value of A in the specified amount, it is not apportioned based on time spent in Ireland, but if an employee is entitled to double taxation relief on part of the income from that employer, this amount is excluded.

Example 11

If Akito was entitled to double taxation relief in respect of €50,000 of his income, the specified amount would be calculated as follows:

Relevant income	€175,000 - €50,000 =	€125,000
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As relevant income exceeds €100,000, he qualifies for SARP relief.

Total taxable income:	Salary	€125,000
	Bonus	€17,500
	Company Car	€15,000
		€157,500

Specified amount:	(€157,500 - €100,000) x 30% =	€17,250
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Revised taxable income:	€157,500 - €17,250 =	€140,250
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Where an individual is not resident in Ireland for a complete tax year (e.g. the year of arrival), the €100,000 threshold will be reduced accordingly. **Note:** the employee must be tax resident in the State for a tax year to claim SARP relief in that year. For example, if an individual arrives in Ireland on 1st May, the relevant income threshold of €100,000 must be apportioned down to €66,666 (€100,000 / 12 months x 8 months).

If an employee arrived in Ireland on 1st October, that person would not be tax resident in the year of arrival as he does not meet the tax residency tests, unless he elected to be tax resident for that year. If he is not tax resident in the year of arrival, SARP relief can be claimed in the following tax year assuming all the qualifying conditions are met.

Example 12

Ann has been assigned to Ireland on a temporary assignment and arrived in Ireland on 1st May. She will earn a salary of €200,000 between May and December and fulfils the conditions of SARP. She is not entitled to double taxation relief on any part of her income. The specified relief is calculated as follows:

Relevant income:	Salary:	€200,000
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As Ann only arrived in Ireland on 1st May, the €100,000 threshold should be reduced as follows:

€100,000 x 8 / 12 =	€66,666
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As Ann's relevant income exceeds €66,666, she qualifies for SARP relief.

Specified amount:	(€200,000 - €66,666) x 30% =	€40,000
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Revised taxable income:	€200,000 - €40,000 =	€160,000
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Example 13

If Ann was entitled to double taxation relief in respect of €60,000 of her income, the specified amount would be calculated as follows:

Relevant income:	Salary: €200,000 - €60,000 =	€140,000
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As Ann only arrived in Ireland on 1st May, the €100,000 threshold should be reduced as follows:

€100,000 x 8 / 12 =	€66,666
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As Ann's relevant income exceeds €66,666, she qualifies for SARP relief.

Specified amount:	(€140,000 - €66,666) x 30% =	€22,000
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Revised taxable income:	€140,000 - €22,000 =	€118,000
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Individuals who qualify for SARP relief are also entitled to claim split year residence relief in the year of arrival and the year of departure where applicable. However, they are not entitled to simultaneously claim:

- Relief for key employees involved in research and development
- Transborder relief
- Foreign Earnings Deduction in respect of income earned in certain foreign states.

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Where an employee avails of SARP relief, his employer is required to submit an end of year return to Revenue by 23rd February of the following year, giving details of the employees who availed of the relief, the amount of their income, any specified amount which was paid tax free through payroll, any costs paid for an annual return trip home or school fees paid, details of the increase in the number of employees and details of the number of employees retained by the company as a result of SARP relief. *A SARP Employer Return is included at the end of the chapter.*

Employees who avail of SARP are also deemed to be chargeable persons and are required to complete a full self-assessment tax return for each year the relief is claimed. As the legislation currently stands, employees arriving in Ireland after the end of 2025 will no longer be able to claim SARP relief. However, this end date may be subject to change.

9. Exchange Rates

Where an employer has to convert a foreign currency salary into Euro, Revenue will accept the exchange rate at either:

- a) The date of calculation, in the employer's records, of the tax liability related to the payment, or
- b) The actual date of payment of the salary

provided either method is used on a consistent basis and where (a) above is used, the date of calculation of the tax liability is not later than the date of payment of the salary.

10. PRSI for Employees posted to Ireland on Temporary Assignments

Where a foreign national moves to Ireland and takes up an employment with an Irish employer, he is subject to PRSI on his earnings. However, where an employee is posted to Ireland by a foreign employer on a temporary assignment, he can be classified into 3 broad categories as follows, depending on the country he is posted from.

10.1 Employee posted abroad from an EEA Country

Where a foreign employee is posted on a temporary assignment to Ireland he will continue to pay national insurance in his home country for the first 2 years of that assignment. An EEA country includes the countries of the EU and also Iceland, Norway, Liechtenstein, Switzerland and the UK (excluding Isle of Man and Channel Islands).

A Portable Document A1 (also known as a Form A1) should be obtained from relevant Social Insurance agency in the employee's home country. This should be given to the payroll department of the Irish company and will provide an exemption from paying PRSI (employee and employer) in Ireland. Form A1 may be renewed beyond the initial 2 year period with the agreement of both countries

10.2 Employees posted from a Bilateral Agreement Country

A social insurance bilateral agreement is a social security agreement between two countries. It protects State pensions and benefits for employees who have worked in both countries. It does this by allowing periods of social insurance in one country to be used when claiming entitlements in the other country.

Where an employee is temporarily posted to Ireland by their foreign employer they will be granted an exemption from Irish PRSI for the below periods and will remain on the social insurance system in their home country (with the exception of New Zealand, where an assignee from New Zealand is only liable to pay social insurance in New Zealand for 1 year, but this can be reviewed annually).

Australia	4 years	New Zealand	2 years
USA	5 years	Quebec	2 years
Canada	2 years	UK - Isle of Man and Channel Islands	3 years
Republic of Korea	5 years	Japan	5 years

Following the expiry of these periods, PRSI will become payable in Ireland unless the relevant authorities have agreed to an extension. If an extension is to be requested, the DSP and the authorities of the other country will have to be satisfied that the posting is temporary.

10.3 Employee posted from a non-EEA and non-Bilateral Agreement Country

Employees placed on a temporary assignment in Ireland by an employer from a country outside the EEA and with which Ireland does not have a bilateral agreement may be exempt from paying Irish PRSI for up to 12 months, if:

- The assignee does not normally reside or work in Ireland, and
- The employer is not ordinarily resident in Ireland or does not have his principal place of business in Ireland.

11. Residence and Employment Permits

Nationals of the European Economic Area (EEA) and Switzerland are entitled to come to Ireland to take up employment with no requirement to obtain an employment permit. The EEA includes all EU Member States as well as Norway, Iceland, Liechtenstein. While the UK is no longer a member of the EU, UK citizens are protected by the Common Travel Area which is an agreement between Ireland and the UK. Irish and UK citizens have the right to live, travel, work and study within the Common Travel Area. Nationals from any other country will generally require an employment permit to work in Ireland.

An application for an employment permit must be made at least 12 weeks before the proposed commencement date. Applications can be made online at:

<https://epos.djei.ie/EPOSOnlineportal#/app/welcome>

A non-EEA/non-Swiss National is entitled to work in Ireland without an employment permit if:

- The individual is a registered student working less than 20 hours a week, or
- The individual is employed and resident in another EU Member State and has been assigned to work in Ireland for up to 12 months, or
- The individual is married to an Irish/EEA citizen.

Individuals arriving to Ireland from outside the EEA and Switzerland will generally be required to:

- Apply for immigration permission before coming to Ireland, and
- Assuming permission is granted, following their arrival into Ireland, they must register with the Immigration Service for an Irish Residence Permit (IRP) if they intend to stay in Ireland

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for more than 90 days. An IRP is not required where the individual is staying in Ireland for less than 90 days.

If permission is granted, they will be issued with an IRP which is generally granted per a period of 1 to 2 years and can be renewed. An IRP is required to legally remain in the country whether the individual is employed or not. A taxable BIK does not arise where the employer pays the IRP registration fee on behalf of the employee where the employment contract is for more than 90 days, as the employee would be unable to carry out the duties if they did not have an IRP.

Individuals arriving from certain countries may also require a visa to travel to Ireland. Confirmation as to those nationalities who require a visa can be found at: <http://inis.gov.ie/en/INIS/Pages/check-irish-visa>. An individual who requires a visa to enter Ireland and who intends to work while in Ireland must obtain an Employment Visa which will require the individual to submit a copy of his employment permit with his visa application.

11.1 Atypical Working Scheme

The Atypical Working Scheme provides a mechanism to deal with short-term employments in Ireland for up to 90 days which are not covered by the Employment Permits Acts. Applications must be made prior to travelling to Ireland. Where approved, an individual must travel to Ireland within 90 days of the approval being issued and it allows them to work in Ireland for up to 90 days at which point the individual must leave Ireland. This scheme is only available in respect of certain eligible employments and applies where the individual will be in Ireland for between 15 and 90 consecutive calendar days, however, only 1 application per person in a 12 month period is permitted. Further information is available at: <https://www.irishimmigration.ie/coming-to-work-in-ireland/what-are-my-work-visa-options/applying-for-a-long-stay-employment-visa/atypical-working-scheme/>

11.2 Employment Permits

The **Employment Permits (Amendment) Act 2014** introduced changes to the system for issuing Employment Permits in Ireland and provisions to deter employers from employing foreign nationals without an employment permit.

The employee or the employer can apply for the employment permit and it is issued to the individual with a certified copy sent to the employer. Employment permit holders can only work for the employer, or as the case may be, the connected person or contractor, and in the occupation named on the permit. If the holder of an employment permit ceases, for any reason, to be employed by that employer named on the permit during the period of validity of the permit, the original employment permit and the certified copy held by the employer must be returned to the Department of Enterprise, Trade and Employment. The various categories of employment permits are outlined below.

Where an employee can prove to a Court that he took all reasonable steps to comply with the Employment Permit requirements, he can take a civil action against his employer to recover any amount of unpaid wages or the difference between the amount paid by the employer and the National Minimum Wage in place. The employer may also be responsible to the Court for all costs incurred.

The Act confirms that compensation granted by a Court under the **Employment Permits (Amendment) Act 2014** is excluded from the tax exemption which applies to compensation granted under other employment legislation. Therefore, any compensation granted will be fully

liable to Income Tax and USC, but it is not considered to be reckonable emoluments for PRSI purposes.

11.2.1 Critical Skills Employment Permit

The Critical Skills Employment Permit is designed to attract highly skilled people into the labour market with the aim of encouraging them to take up permanent residence in the State.

This permit is issued for job offers of 2 years in duration. Where the employment permit holder has completed 1 year of employment with the original employer specified on the permit, he can change employer, provided a new employment permit is applied for. However, 1 year's service is not required to change employer where:

- The permit holder is made redundant, or
- Circumstances which were unforeseen at the time of the application fundamentally change the employment relationship.

If a Critical Skills Employment Permit holder is made redundant, he has up to 6 months from the date of redundancy to find alternative employment.

The full range of Irish Employment Rights applies to all employment permit holders. For a restricted number of strategically important occupations (included in the Highly Skilled Eligible Occupations List) annual remuneration of at least €32,000 and a relevant degree qualification or higher is required. All occupations with annual remuneration of at least €64,000 qualify, other than those on the Ineligible Categories of Employment for Employment Permits or those contrary to the public interest. Annual remuneration is deemed to include basic salary (at least equivalent to the national minimum wage) and the amount of any medical insurance paid.

The employee must have the relevant qualifications, skills and experience required for the employment. An application will not be processed where it is found that following the issue of the permit, more than 50% of the employees in the organisation are non-EEA nationals. This restriction may be waived for start-up companies if the company is a registered client of Enterprise Ireland or the IDA within 2 years of the establishment. The employer must also be registered with the Companies Registration Office and the Revenue Commissioners and be trading in Ireland.

A Critical Skills Employment Permit holder can seek immediate family reunification and once his dependants, partner or spouse are resident in the State, they have full access to the Irish labour market without the need to obtain an employment permit.

11.2.2 Intra-Company Transfer Employment Permits

Intra-company Transfer Employment Permits facilitate the transfer of senior management, key personnel or trainees who are foreign nationals from an overseas branch of a multinational corporation, to its Irish branch.

This permit will be issued to the following persons only:

- Senior management or key personnel earning a minimum annual remuneration* of €40,000, or
- Personnel undergoing a training programme earning a minimum annual remuneration* of €30,000.

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*Annual remuneration is deemed to include basic salary (at least equivalent to the national minimum wage), the amount of any medical insurance paid and any payment for board and accommodation or the value of board and accommodation paid by the employer.

The foreign employer is responsible for ensuring that the national minimum wage is maintained and once this is achieved it is then up to the foreign employer or the connected Irish entity to pay any additional amounts to achieve the minimum annual salary requirement of €40,000 or €30,000 as applicable.

This Permit will be granted subject to the following information being included on the individual's payslip:

- a) The amount of the basic salary payable when the application is made,
- b) Any additional payment made to maintain the National Minimum Wage, if applicable
- c) Total of amounts paid in a) and b),
- d) All deductions to be made, if any, from the amounts in a) and b), and
- e) The amount payable to the foreign national, during the period covered by the employment permit which is to be granted net of any deductions.

Payslips are required to support an application for a renewal Permit and where the payslip does not set out the basic salary (as set out above); this will affect the application for a renewal.

The permit will be issued for a defined period of time, but will only be issued for a maximum of 24 months in the first instance and this may be extended to a maximum of 5 years, upon application. An application for a renewal must be submitted on the prescribed form within 16 weeks prior to the expiry of the existing permit.

A spouse/civil partner or dependant must apply for a work permit in their own right if they wish to take up employment in Ireland.

11.2.3 Exchange Agreement Employment Permit

The Exchange Agreement Employment Permit is designed to facilitate employment of foreign nationals in the State under prescribed agreements or other international agreements that the State is party to.

This permit may be issued for up to a maximum of 2 years, depending on the exchange agreement which primarily relate to students or graduates.

The employer must also be registered with the Companies Registration Office and the Revenue Commissioners and be trading in Ireland and an employment permit will not issue unless at the time of application 50% or more of the employees are EEA nationals. A Labour Market Needs Test (LMNT) is not required for an Exchange Agreement Employment Permit.

The applicant must be offered the national minimum wage or higher and he must also possess the relevant qualifications, skills, knowledge or experience for the position. The application must be supported by a letter from the exchange organisation and will be accepted for all occupations with the exception of occupations in a domestic setting.

11.2.4 Internship Employment Permit

The Internship Employment Permit is designed for employment of foreign nationals in the State who are full-time students, enrolled in a third level institution outside the State, to gain work experience. The Permit is issued for a maximum period of 12 months and it is not renewable.

In order to qualify for the Employment Permit:

- The individual must be in receipt of the National Minimum Wage or higher,
- The internship must be one of the employments on the Highly Skilled Eligible Occupations list,
- The course must be wholly or substantially connected with the skills shortages identified on the Highly Skilled Eligible Occupations list,
- It must be a condition of the course of study that practical experience is obtained,
- The employee must leave the State on completion of the internship

A spouse/civil partner or dependant must apply for a work permit in their own right if they wish to take up employment in Ireland. The employer must be registered with the Companies Registration Office and the Revenue Commissioners and be trading in Ireland. An Employment Permit will not issue, unless, at the time of application, 50% or more of the employees are EEA nationals. A LMNT is not required for an Internship Employment Permit.

An application will only be accepted for a foreign national who:

- Is a full-time student, including post-graduate students, enrolled in a third-level institution outside the State,
- Is pursuing a degree course or higher, and
- Has an offer of an internship with an employer in the State.

11.2.5 General Employment Permit

The General Employment Permit is used to attract non EEA nationals for occupations that are experiencing a labour or skills shortage. General Employment Permits assume all occupations to be eligible unless otherwise specified.

The permit is issued for an initial 2 year period after which it can be renewed for a further 3 years. The applicant must have a genuine job offer from an employer who is registered with the Companies Registration Office and the Revenue Commissioners and be trading in Ireland.

In order to qualify for a General Employment Permit, the application must show:

- A full description of the proposed employment.
- That the employment is not in an excluded job category under the Ineligible Categories of Employment for Employment Permits.
- The information in respect of the qualifications skills or experience required for the employment.

That the minimum annual remuneration* is €30,000, or €27,000 in respect of:

- a non-EEA student – who has graduated in the last 12 months, from an Irish third level institution, and has been offered a graduate position from the Highly Skilled Eligible Occupations List (the minimum annual remuneration must be €30,000 at renewal stage);
- a non-EEA student – who has graduated in the last 12 months, from an overseas third level institution, and has been offered a graduate position as an ICT professional from the Highly

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- Skilled Eligible Occupations List (the minimum annual remuneration must be €30,000 at renewal stage); and
- an employment which requires a person fluent in the official language of a State which is not in the EEA, where the employment is supported by an enterprise development agency and the employment is in:
 - (i) a customer service and sales role with relevant product knowledge,
 - (ii) a specialist online digital marketing and sales role, or
 - (iii) a specialist language support and technical sales support role,

*Annual remuneration is deemed to include basic salary (at least equivalent to the national minimum wage), the amount of any medical insurance paid by the employer.

The prospective employee concerned must be employed, salaried and paid directly by the employer. An employment permit will not issue unless at the time of application at least 50% of the employees are EEA nationals. A LMNT is required in most cases. A spouse/civil partner or dependant must apply for a work permit in their own right if they wish to take up employment in Ireland.

11.2.6 Sports and Cultural Employment Permit

The Sport and Cultural Employment Permit caters for employment permits for the sports and cultural sectors.

The Permit is designed to facilitate employment in the State of foreign nationals with relevant qualifications, skills and experience or knowledge for the development, operation and capacity of sporting and cultural activities. The permit is issued for an initial 2 year period after which it can be renewed for a further 3 years.

The employer must be registered with the Companies Registration Office and the Revenue Commissioners and be trading in Ireland. The National Minimum Wage or higher must be maintained.

A spouse/civil partner or dependant must apply for a work permit in their own right if they wish to take up employment in Ireland. The prospective employee concerned must be employed, salaried and paid directly by the employer. An employment permit will not issue unless at the time of application at least 50% of the employees are EEA nationals. A LMNT is not required in most cases.

11.2.7 Reactivation Employment Permit

The Reactivation Employment Permit is designed for cases where a foreign national, who entered Ireland with a valid employment permit, fell out of the system through no fault of their own or was badly treated or exploited in the workplace, to enable them work legally again.

The permit is issued to an individual who:

- previously held an employment permit, but who fell out of the system and remained in Ireland, although not currently legally resident in Ireland.
- holds a current Spousal/Dependant Employment Permit or new Dependant/Partner/Spouse Employment Permits whose circumstances have changed (e.g. separation) and where the Minister for Justice and Equality is satisfied that a Reactivation Employment Permit should be considered in the case.

- holds a Reactivation Employment Permit who is made redundant. They have up to 6 months to seek a new position and apply for a new Reactivation Employment Permit.
- holds a new Reactivation Employment Permit who wishes to change employer.

A Reactivation Employment Permit will be issued under the following circumstances:

- the salary must be equal to or greater than the National Minimum Wage,
- all occupations are permitted, including certain carers in the home, but excluding all other occupations in a domestic setting, and
- the foreign national must possess the relevant qualifications, skills or experience required for the employment.

A spouse/civil partner or dependant must apply for a work permit in their own right if they wish to take up employment in Ireland. The employer must be registered with the Companies Registration Office and the Revenue Commissioners and be trading in Ireland.

The prospective employee concerned must be employed, salaried and paid directly by the employer. An employment permit will not issue unless at the time of application at least 50% of the employees are EEA nationals. A LMNT is not required in most cases.

11.2.8 Employment Permit Fees

All fees must be made by Electronic Funds Transfer for all business applications. Individuals may continue to use paper based payments in the form of Euro denominated cheques, bank drafts or postal orders which are made payable to the Department of Enterprise, Trade and Employment.

A taxable BIK does not arise where an employer pays for the cost of a work permit on behalf on an employee.

Employment Permit Category	First Application Fee	Renewal Fee
General Employment Permit	€1,000 up to 24 months and €500 for six months or less	€750 for 6 months or less
		€1,500 up to 36 months
Critical Skills Employment Permit	€1,000 up to 24 months	N/A
Dependant/Partner/Spouse Permit	No fee	No fee
Intra-Company Transfer Employment Permit	€1,000 up to 24 months and €500 for six months or less	€500 for 6 months or less
		€1,000 up to 24 months
		€1,500 up to 36 months
Contract for Services Employment Permit	€1,000 up to 24 months and €500 for six months or less	€750 for 6 months or less
		€1,500 up to 36 months
Reactivation Employment Permit	€1,000 up to 24 months and €500 for six months or less	€750 for 6 months or less
		€1,500 up to 36 months
Sports and Cultural Employment Permit	€1,000 up to 24 months and €500 for six months or less	€750 for 6 months or less
		€1,500 up to 36 months
Exchange Agreement Employment Permit	No fee	N/A
Internship Employment Permit	€1,000 up to 13 months and €500 for six months or less	N/A

CHAPTER 17

SARP 1A - Application Form for SARP Relief

Form SARP 1A

Certification by employer under Section 825C of the Taxes Consolidation Act 1997



Relief under the Special Assignee Relief Programme (SARP)

Note: This form is to be completed in respect of new arrivals to the State from 2023 to 2025 only.

Part C should only be completed for claims to grant SARP relief through the PAYE system.

The completed form must be returned through MyEnquiries or to the National SARP Unit,
9/15 Upper O'Connell St., Dublin 1, D01 YT32 **within 90 days of the relevant employee's arrival in the State** to perform duties of employment in the State.

All questions on this form must be completed. Approval for SARP will not issue if this form is submitted to Revenue incomplete.

PART A Information to be completed by employer

1.	Name of relevant employee		
2.	Address of relevant employee (include Eircode, if known)		
3.	PPSN of relevant employee		
4.	Name and address of the relevant employer where the relevant employee was a full time employee prior to his or her arrival in the State		
5.	Was the relevant employee a full time employee of the relevant employer for a minimum period of 6 months prior to arrival in the State?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
6.	Did the relevant employee perform duties of employment for the relevant employer, as at 4 above, outside the State for a minimum period of 6 months prior to arrival in the State?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
7(a).	Name and address of the company for whom the relevant employee performs duties of employment in the State		
7(b).	Has the relevant employee or associated company complied with the requirements under Regulation 17(2) of the Income Tax (Employments) Regulations 2018 (S.I. No. 345 of 2018)?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
8(a).	The date (DD/MM/YYYY) relevant employee first arrived in the State to perform duties of employment in the State		
8(b).	The date (DD/MM/YYYY) relevant employee first performed duties of employment in the State		
8(c).	Indicate if employee – <ul style="list-style-type: none">• will be tax resident for the year of arrival, or• is electing to be treated as tax resident for the year of arrival	YES <input type="checkbox"/>	NO <input type="checkbox"/>
YES <input type="checkbox"/>	NO <input type="checkbox"/>		
9.	The expected duration that the relevant employee will perform duties of employment in the State		
10.	Is the relevant income €100,000 or more per annum (or the annualised equivalent) i.e. relevant employee's basic salary before benefits, bonuses, commissions, share based remuneration?	YES <input type="checkbox"/>	NO <input type="checkbox"/>

PART B Certification by employer

I certify on behalf of [insert company name] that
..... [insert relevant employee name]

- (a) was a full time employee of [insert company name]
(a 'relevant employer') for the whole of the 6 months immediately prior to his/her arrival in the State and
that he/she exercised the duties of his/her employment for that relevant employer outside the State;
- (b) arrived in the State on [insert date] at the request of
..... [insert company name] (a 'relevant employer') -
- (i) to perform in the State duties of his/her employment for that relevant employer,
or
- (ii) to take up employment in the State with [insert company name],
a company that is an associated company of [insert
company name] (a 'relevant employer') and perform duties in the State for that company;
 appropriate box
- (c) will perform duties of the employment in the State for that relevant employer or associated company, as
appropriate, for a minimum period of 12 consecutive months from the date the relevant employee first
performs those duties in the State.

I undertake to notify the National SARP Unit, 9/15 Upper O'Connell St., Dublin 1, D01 YT32 in the event that
the circumstances regarding the relevant employee's entitlement to the relief change¹.

Signed: Capacity of
signatory:

Name: **BLOCK CAPITALS**

Telephone: E-mail:

Company Tax Reference Number: Date:

**PART C Application to grant relief by way of non-deduction of tax under the
Pay As You Earn tax system**

I wish to apply on behalf of [insert company name]
for permission to grant relief under SARP to [insert employee's name] by
way of non-deduction of tax under the Pay As You Earn system.

Signed: Capacity of
signatory:

Name: **BLOCK CAPITALS**

Telephone: E-mail:

Company Tax Reference Number: Date:

¹ Notifications regarding a change in the employee's circumstances should be sent in writing.

CHAPTER 17

SARP Employer Return 2022

SARP Employer Return for the period 1 January 2022 to 31 December 2022

**Employer Registration Number**

Remember to quote this number in all correspondence
or when calling at the company's Revenue office

<input type="text"/>									
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**Employer
Name / Address****Return Address**

The fully completed form should be returned to the National SARP Unit through MyEnquiries under the Tax Type "PAYE" and Category "Special Assignee Relief (SARP)" or by post to:

National SARP Unit
9/15 Upper O'Connell St
Dublin 1
D01 YT32

Use any envelope and write "Freepost" above the Return Address. You do not need to attach a stamp.

**Return by employer of employees who availed of relief under the
Special Assignee Relief Programme (SARP)
(Section 825C Taxes Consolidation Act 1997)**

You are hereby required to prepare and deliver a return, for the period 1 January 2022 to 31 December 2022, of the items on pages 2 and 3 of this form in respect of **all** employees who availed of SARP (whether through payroll or otherwise) for the period 1 January 2022 to 31 December 2022. **Please include employees who ceased to claim SARP during the year.**

Note: Employers must complete all three pages of this return. This return can be completed on-screen and then printed. You do not need to enter the name and PPSN of each employee on both pages 2 and 3. When the names and PPSN are completed on-screen on page 2, they will automatically populate in the relevant boxes on page 3.

This return should be returned to the above address on or before **23 February 2023**

YOU MUST SIGN THIS DECLARATION

I declare that, to the best of my knowledge and belief, this form contains a correct return of the matters requested for the period 1 January 2022 to 31 December 2022 in accordance with the provisions of the Taxes Consolidation Act 1997.

Signature

(DD / MM / YYYY)

 / / Capacity of
Signatory

Telephone No.

Name of
Company**Contact Details (in case of query about this return)**

Agent's TAIN

Contact Name

Client's Ref.

Telephone No.

E-mail

RPC016339_EN_WB_I_1

CHAPTER 17

Employees who availed of relief under the Special Assignee Relief Programme (SARP) (whether through payroll or otherwise)

CHAPTER 17

Employees who availed of relief under the Special Assignee Relief Programme (SARP) (whether through payroll or otherwise)

Name	PPSN	Gross income from the employment before deduction of SARP relief (less amounts contributed to pension and amounts not assessed to tax in the State)	Was SARP relief claimed through payroll? Yes / No	If you answered "Yes" to the previous question, please state the amount of SARP relief claimed	Did a tax equalisation arrangement apply to the employment income? Yes / No	Enter the value of				
						Costs associated with an annual return trip to the country of residence or nationality for self, spouse or civil partner and children (S. 825C(6)(a))	Number of people travelling	Total amount of school fees paid or reimbursed by employer in respect of children of the relevant employee attending an approved school in the State (S. 825C(6)(b))	Amount of school fees paid or reimbursed by employer in excess of threshold and subject to tax	Number of children for which school fees are paid or reimbursed by employer
		€		€		€		€	€	
		€		€		€		€	€	
		€		€		€		€	€	
		€		€		€		€	€	
		€		€		€		€	€	
		€		€		€		€	€	
		€		€		€		€	€	
		€		€		€		€	€	
		€		€		€		€	€	
		€		€		€		€	€	

Increase in the number of employees in the company as a result of the operation of SARP relief *

Number of employees retained by the company as a result of the operation of SARP relief *

* Do not include any employee who availed of SARP relief.

Note: All questions on this form are mandatory and must be completed.

SARP Employer Return 2022

CHAPTER 18

Taxation of Outbound Assignees

- 1. Irish Employees Working Abroad**
 - 2. Irish Employment Exercised Abroad by a Non-Resident Employee**
 - 3. Bonuses**
 - 4. Travel and Subsistence Expenses**
 - 5. Credit through PAYE system for non-refundable Foreign Tax**
 - 6. Foreign Earnings Deduction**
 - 7. Social Insurance for Employees Posted on Temporary Assignments**
-

1. Irish Employees Working Abroad

Where an employee is assigned to work outside the State for a period of at least 1 month, the **Terms of Employment (information) Acts 1994 to 2014** requires an employer to provide the following information relevant to the employment outside the State to the employee in advance of his departure:

- The country or countries in which the work is to be performed and its anticipated duration.
- Currency in which the employee is to be paid in respect of that period.
- Any benefits in cash or kind payable to the employee in respect of the employment outside the State.
- Any terms and conditions governing the employee's repatriation.

The employee's Irish income tax and USC liabilities will depend on whether he is resident or non-resident in Ireland for tax purposes.

2. Irish Employment Exercised Abroad by a Non-Resident Employee

As outlined in the chapter entitled Residence in Ireland for Tax Purposes:

- Individuals who are neither resident nor ordinarily resident in Ireland for a tax year are only liable to Irish income tax on Irish source income including the income from an Irish public office or income derived from any trade, profession or employment which is exercised in Ireland, subject to any relief which may be available under the terms of a Double Taxation Agreement; and
- Individuals, who are ordinarily resident in Ireland, but not resident, are taxable on their worldwide income with the exception of income derived from a non-public office or employment where all of the duties (except incidental duties) are performed abroad.

Based on these taxing provisions as outlined in the Taxes Consolidation Act, regardless of whether an employee is ordinarily resident in Ireland or not, where the employee is not tax resident in Ireland for a tax year, any income derived from a non-public office or employment (e.g. a private sector employment) which is exercised wholly outside of Ireland is not liable to Irish income tax or USC. Where an employee has been assigned abroad on a temporary

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assignment and becomes non-resident in Ireland, it makes sense that his emoluments are not taxed at source under the PAYE system.

On receipt of an application from an employer, where Revenue is satisfied that an employee will become non-resident in Ireland for tax purposes and will exercise the duties of his employment wholly outside the State (with the exception of incidental duties of up to 30 days which may be performed in Ireland), Revenue will issue a PAYE Exclusion Order to the employer. A PAYE Exclusion Order removes the obligation on an employer to deduct income tax and USC from an employee's wages under the PAYE system. Employers should seek advice in the other country to which the employee has been assigned to determine if any payroll tax withholding obligations exist in that country.

To become non-resident, the employee will have to be absent from the State for a complete tax year or for a sufficient period over 2 tax years to break his Irish tax residence. Split Year Relief applies to Irish residents who emigrate from Ireland during a tax year which ensures that foreign employment earnings earned after departure from the State are not subject to Irish income tax or USC. Split Year Relief is facilitated through payroll by the issue of a PAYE Exclusion Order. In determining where the duties of the employment are exercised, incidental duties (i.e. fewer than 30 days) performed in the State may be ignored.

To apply for a PAYE Exclusion Order, the employer should submit a letter to Revenue, containing the employee's name and PPSN, confirming the length of time the employee will be working abroad. Where issued, A PAYE Exclusion Order exempts the employer from his obligation to deduct PAYE and USC at source from the employee's wages. It may cover a full tax year or part of a tax year where the individual qualifies for Split Year Relief. The PAYE Exclusion Order remains valid assuming the employee continues to exercise his duties abroad and is not tax resident in Ireland, subject to the expiry date specified on the PAYE Exclusion Order. If the employee continues to work abroad after the expiry date, the employer can apply for another PAYE Exclusion Order.

A PAYE Exclusion Order only relieves the employer from deducting Income Tax and USC under the PAYE system. A PRSI (both employee and employer) liability may still arise. Any PRSI deducted should be remitted to Revenue on the relevant Payroll Submission where the employee remains on an Irish payroll.

Where a PAYE Exclusion Order is in place, the taxable pay and pay for USC should be recorded as nil on the Payroll Submission as the employer is exempted from his obligation to operate PAYE and USC. The Exclusion Order field on the Payroll Submission should be set to true. The gross pay, pay for employee PRSI purposes and pay for employer PRSI purposes and the amount of employee and employer PRSI should be recorded with the number of insurable weeks and PRSI class.

Example 1

Joe Kelly is employed by Bluesky Ltd and is being assigned to work in the US from 1st January 2023 to 31st May 2024. It is anticipated that he will spend less than 30 days in Ireland during the tax year.

Solution 1

As Joe will not be tax resident in Ireland in the current tax year, Bluesky Ltd should apply to Revenue for a PAYE Exclusion Order. Once issued, PAYE and USC should not be deducted from

his pay. Bluesky Ltd should also apply for a Certificate of Coverage from the DSP which will retain Joe on the Irish PRSI system (see below for further information on the social insurance implications). Bluesky Ltd should seek advice regarding any responsibilities or liabilities which may arise in the US.

PAYE Exclusion Orders are generally not issued in respect of:

- Payments made to non-resident directors of an Irish incorporated company as such payments are chargeable to tax in Ireland under the PAYE system irrespective of the director's tax residence position or where the duties of the office or director are exercised. Further information regarding the PAYE, PRSI and USC treatment of payments made to directors can be found in the chapter entitled **Company Directors**.
- Holders of a public office or public sector employments as such income is generally within the charge to tax in the State regardless of where the individual is resident or where the employment is exercised. This also include Irish public sector pensions which are taxable in Ireland. Further information is available in the chapter entitled **Residence in Ireland for Tax Purposes**.

An employer is not required to apply for a PAYE Exclusion Order, where the employee:

- Is not resident in the State for tax purposes,
- Was recruited abroad,
- Carries out all the duties of employment abroad,
- Is not a director of the employer, and
- Is outside the charge to tax in the State.

Where the above conditions are met, the employer is not required to operate the PAYE system on wages paid to this non-resident employee and the employee is not required to apply for a PPS number. The employer is not required to include this employee on his Payroll Submission; however, he is required to keep records of the payments made to such an employee.

2.1 Irish employment partly exercised abroad by a non-resident employee

Where an employee is assigned abroad and becomes non-resident, they are still liable to tax on Irish sourced income, regardless of whether they are ordinary resident or not. Where there is certainty as to the amount of the earnings which are attributable to the duties performed in Ireland, PAYE and USC should be applied to this element, based on the following method of apportionment:

$$\text{Employment Income} \quad \times \quad \frac{\text{Total work days in the State}}{\text{Total work days in a year (260 days)}}$$

Where an employee performs his duties in 2 or more EU Member States, social insurance is generally only payable in one Member State. This is covered in more detail below.

Example 2

Josh is employed by an Irish company and earns €100,000 per year. He works 1 day a week in Ireland and 4 days a week in the UK. Josh is not resident in Ireland for tax purposes. Calculate the amount of Josh's earnings that are liable to PAYE and USC.

Solution 2

As Josh performs his duties for 1 day a week in Ireland, his income must be apportioned based on the number of days he performs his duties in Ireland as follows:

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$$\text{€}100,000 \times 52 \text{ days} / 260 \text{ days} = \text{€}20,000$$

€20,000 of Josh's salary is subject to PAYE and USC in Ireland.

If there is any difficulty in ascertaining the amount of income from the foreign employment which is attributable to the duties performed in Ireland (e.g. commission based employment or unpredictable work), a submission outlining the circumstances should be made to Revenue who will advise accordingly.

2.2 Irish employment partly exercised abroad by a resident employee

Where an employee continues to be tax resident in Ireland, PAYE and USC should be deducted from the total income. As the employee is tax resident, a PAYE Exclusion Order will not be issued. Where the employee is simultaneously liable to foreign income tax on the same income based on the duties performed abroad, the employee can apply to Revenue for a tax credit for the non-refundable foreign tax deducted.

Example 3

Jeff is employed by an Irish company and earns €100,000 per year. He was assigned to work in Germany for 3 months in 2023. As Jeff will not break his tax residency, his full salary of €100,000 remains liable to tax, USC and PRSI under the PAYE system. If applicable, Jeff can apply for a tax credit in respect of any non-refundable tax which may arise in Germany.

3. Bonuses

Since 1st January 2018, the majority of PAYE taxpayers are subject to tax on a receipts basis (i.e. the income is taxable when it is paid, regardless of when it is earned). However, where an employer holds a PAYE Exclusion Order for an employee, he is assessable on an earnings basis (i.e. based on when the money was earned, not when paid). Generally, USC is not deducted from an employee for whom the employer holds a PAYE Exclusion Order.

This poses a potential issue regarding how performance bonuses are dealt with from a tax perspective where a PAYE Exclusion Order is in place either when the bonus is paid, or during the period the bonus was earned.

If an employee receives a performance bonus following his departure, which relates to the period before he left the State, the portion which relates to the period before he left the State is liable to tax and USC on the receipts basis (i.e. it is subject to PAYE and USC at the time of payment).

A PRSI liability may still arise in respect of such bonuses where the employee continues to be subject to PRSI (e.g. employees on a temporary assignment to another country continue to be liable to PRSI for the first 12 months of an assignment, or longer where the employee is posted to another EU State or a Bilateral Agreement country).

Employers should apply the following process in such cases to collect the Income tax, USC and PRSI which is due:

- Assign the PAYE Exclusion Order against the employee's original Employment ID. This should be used to pay the employee's wages which are covered by the PAYE Exclusion Order which will result in no tax or USC being deducted.
- Create a second employment record with a new (different) Employment ID to facilitate the collection of the tax and USC due on the bonus (or part thereof),

- The start date of the new Employment ID should be the date of the payment and the employer should enter a leave date as the day after the date of payment,
- Request an RPN for the new Employment ID. Revenue should issue a Nil RPN. If the RPN does not have Nil credits and rate band allocated to it, it is advisable to operate on that basis.
- This will result in tax and USC being deducted at the higher rates on the bonus (or part thereof) under the new Employment ID.
- Make a payroll submission in respect of the payment. The entire bonus (whether taxable or not) should be included in the gross pay field (and Pay for employee and employer PRSI purposes where the employment remains insurable in Ireland), but only the part which was liable to tax and USC should be included in the Pay for tax purposes and Pay for USC purposes fields.
- The employee may claim a refund of tax due at the end of the year by completing an Income Tax Return, if applicable.

Example 4

Ryan was assigned by his Irish employer to work in a sister company in the UK in October 2022 for 2 years. The employer received a PAYE Exclusion Order for Ryan on 1st October 2022 which remains valid for 2023.

A bonus of €12,000 was paid to Ryan in April 2023 in respect of 2022. The bonus is paid under an Irish contract of employment and Ryan was Irish tax resident, ordinarily resident and domiciled in 2022.

As his employer holds a PAYE Exclusion Order for the period from 1st October 2022 to 31st December 2022, the employer is relieved from the obligation to operate PAYE on the portion of the bonus payment in respect of this period (i.e. €3,000).

However, the employer is required to operate PAYE and USC on the bonus payment earned in respect of the period 1st January to 30th September 2022 (i.e. €9,000) when it is paid in April 2023.

The employer should:

- Create a second employment record with a new Employment ID.
- Request an RPN (which should be issued with Nil tax credits and COPs)
- Record the full amount of €12,000 in the fields for Gross Pay, Pay for EE PRSI purposes and Pay for ER PRSI purposes.
- Record the taxable amount of €9,000 in the fields for Pay for Tax Purposes and Pay for USC purposes.
- Make a payroll submission with a commencement date as the date of payment and a cessation date as 1 day after the date of payment.

Similarly, an employee could receive a performance bonus following his return to Ireland, which was earned during a period for which the employer held a PAYE Exclusion Order. In this scenario, the bonus (or part thereof) which was earned during the period the PAYE Exclusion Order was in place is not subject to PAYE and USC.

Example 5

Michelle, who is employed by an Irish employer, was assigned to work in a sister company in the UK in January 2022. The employer received a PAYE Exclusion Order for Michelle for 2022. The PAYE Exclusion Order ceased on 31 December 2022.

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Michelle returned to Ireland and carries out her duties of employment in Ireland during 2023. A performance bonus of €10,000 is paid to Michelle in March 2023 in respect of her duties carried out in the UK during 2022. As the bonus was earned during the period that a PAYE Exclusion Order was in place, PAYE or USC is not due in respect of this bonus.

The total bonus should be included in the payroll submission in March 2023 in the gross pay amount but excluded from the pay for tax purposes and pay for USC purposes. As Michelle remains insurable for PRSI purposes, the payment should be recorded in the Pay for Employee PRSI purposes and Pay for Employer PRSI purposes fields.

4. Travel and Subsistence Expenses

Where an employee travels abroad to perform his employment duties, an employer may pay all the costs involved (actual vouched expenses) or alternatively the employer may pay a daily subsistence rate, which the employee can then use to cover the cost of his accommodation, meals, etc. In such cases, as the domestic subsistence rates will often not be sufficient to cover the relevant costs, foreign subsistence rates may be paid which are greater than the rates payable in Ireland. The rates payable vary according to the foreign location and these are available from <https://circulars.gov.ie/pdf/circular/per/2017/07.pdf>. Where actual vouched expenses exceed the flat rate allowances such vouched expenses may be used instead of flat rate allowances.

The rates may be paid in the following manner in respect of any temporary absence (**up to 6 months**):

Period of Assignment Abroad	% of Subsistence Rate for Relevant Location
First Month	100%
Second and Third Month	75%
Fourth, Fifth and Sixth Month	50%

For long term absence i.e. assignment is **greater than 6 months**, subsistence rates may be paid in the following manner:

Period of Assignment Abroad	Allowable Subsistence
First month of assignment (to facilitate the employee obtaining self-catering accommodation)	Up to the overnight rate
Remainder of Assignment	Up to the cost of reasonable accommodation plus 50% of the day rate (10 hours) for the location

The information as outlined is only relevant to the extent to which the employee remains within the charge to Income Tax. If the employer obtains a PAYE Exclusion Order for an employee (i.e. the employer is not required to deduct Income Tax from the employee under the PAYE system), the question of whether subsistence can be paid free of tax does not arise, as all payments made to that employee are made without deduction of Income Tax and USC. Advice should be obtained in relation to any tax liabilities which may arise in the other country.

5. Credit through PAYE system for non-refundable Foreign Tax

Revenue operates a tax credit through the PAYE system in respect of non-refundable foreign tax incurred by an employee:

- Who is tax resident in Ireland,
- Employed by an Irish employer,
- Under an Irish contract of employment, and
- Who exercises some of his employment duties outside of Ireland.

It can arise that the Irish employer is obliged to operate both PAYE (i.e. where the employee remains tax resident in Ireland and a PAYE Exclusion Order is not issued by Revenue) and foreign payroll taxes (as the employment is exercised in that other country) simultaneously in respect of the same income which is attributable to the employment duties performed abroad. Where this arises, Revenue is prepared, on a case by case basis, to grant tax relief on a real-time basis through the PAYE system in respect of the non-refundable foreign tax by including an estimated tax credit on the employee's Tax Credit Certificate, which will be subject to a review at the end of the tax year. This will result in a revised RPN being issued to the employer.

The tax relief granted will depend on whether the employee exercises his employment duties in a DTA country or non-DTA country. A credit is available in respect of tax paid in another DTA country subject to the credit not exceeding the amount of Irish tax payable on the same income. Double tax relief does not apply to an employee assigned to a non-DTA country, however, unilateral relief may be granted (i.e. by reducing the amount of income assessable to Irish tax by the amount of tax paid in the non-DTA country, which is multiplied by the employee's marginal rate of tax and expressed as a tax credit). In either case the tax payable must be non-refundable by the foreign tax authority. Revenue can only grant an estimated tax credit on a real-time basis through the PAYE system as the final calculation will be dependent on the individual's effective tax rate which will not be known until the end of the tax year.

Revenue will estimate the tax credit to be allowed on an employee's Tax Credit Certificate on a real-time basis by:

- Estimating the Irish effective rate of income tax by dividing the total tax by the total income (which can include other non-employment income) before granting a DTA credit,
- Estimating the foreign effective rate of tax by dividing the foreign tax payable by the amount of income, which was subject to double taxation, and
- Estimating the foreign tax credit to be allowed by deducting the foreign tax from the foreign income, and re-grossing the net foreign income at the lower effective rate.

If the Irish effective rate is higher than the foreign effective rate, a credit for the foreign tax will be granted. If the Irish effective rate is lower than the foreign effective rate, relief is granted partly as a credit and partly as a reduction in the amount of income which was doubly taxed. Where the Irish effective rate is lower than the foreign effective rate, some of the foreign tax may also be available as a credit against the USC payable on the income which is subject to foreign tax, however, this will only be granted by way of a year-end review.

A foreign tax credit will not be available where an employer holds a PAYE Exclusion Order for an employee who has been assigned abroad or where a foreign employer is released from his obligation to operate PAYE in respect of an employee who has been temporarily assigned to Ireland.

A preferential loan arises where the foreign payroll taxes are funded by the employer until such time as they are refunded by the employee.

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Example 6

Tom is single and earns €2,000 per week (€104,000 per year). His Irish employer assigned him to Latvia for 20 weeks and he paid €9,200 in non-refundable Latvian payroll taxes in respect of the €40,000 (€2,000 @ 20 weeks) attributable to his duties exercised in Latvia. This is Tom's only source of income. Calculate the effective tax credit to be granted on Tom's Tax Credit Certificate and reflected in the RPN issued to the employer.

Solution 6

Step 1: Estimate Irish effective rate of tax

Total income		€104,000
Single person SRCOP		€40,000
Gross tax:	€40,000 @ 20% =	€8,000
	€64,000 @ 40% =	<u>€25,600</u>
		€33,600
Less tax credits:	Single Person PAYE	€1,775 <u>€1,775</u>
		€3,550
Total Irish tax liability		€30,050
Irish effective rate:	(€30,050 / €104,000) x 100 =	28.89%

Step 2: Estimate foreign effective rate of tax

Foreign effective rate:	(€9,200 / €40,000) x 100 =	23%
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Step 3: Estimate the foreign tax credit to be allowed by deducting the foreign tax from the foreign income and re-grossing the net foreign income at the lower effective rate.

Gross foreign income		€40,000
Less foreign tax		<u>€9,200</u>
Net foreign income		€30,800
Re-grossed at the lower effective rate:	€30,800 / 77% (100% - 23%) =	€40,000
Foreign tax credit	€40,000 - €30,800 =	€9,200
Weekly tax credit for 20 weeks:	€9,200 / 20 weeks =	€460.00

In this example, there is no difference between the gross income subject to foreign tax and the revised net income subject to foreign tax because the foreign effective rate is lower than the Irish effective rate.

Example 7

Kian is single and earns €2,000 per week (€104,000 per year). His Irish employer assigned him to Denmark for 20 weeks and he paid €14,800 in non-refundable Danish payroll taxes in respect of the €40,000 (€2,000 @ 20 weeks) attributable to his duties exercised in Denmark. This is Kian's only source of income. Calculate the effective tax credit to be granted on Kian's Tax Credit Certificate and reflected in the RPN issued to the employer.

Solution 7

Step 1: Estimate Irish effective rate of tax

Total income		€104,000
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<i>Single person SRCOP</i>		<i>€40,000</i>
<i>Gross tax:</i>	<i>€40,000 @ 20% =</i>	<i>€8,000</i>
	<i>€64,000 @ 40% =</i>	<i><u>€25,600</u></i>
<i>Less tax credits:</i>	<i>Single Person</i>	<i>€1,775</i>
	<i>PAYE</i>	<i><u>€1,775</u></i>
<i>Total Irish tax liability</i>	<i>(€577.88 per week)</i>	<i>€30,050</i>
<i>Irish effective rate:</i>	<i>(€30,050 / €104,000) x 100 =</i>	<i>28.89%</i>

Step 2: Estimate foreign effective rate of tax

<i>Foreign effective rate:</i>	<i>(€14,800 / €40,000) x 100 =</i>	<i>37%</i>
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Step 3: Estimate the foreign tax credit to be allowed by deducting the foreign tax from the foreign income, and re-grossing the net foreign income at the lower effective rate.

<i>Gross foreign income</i>		<i>€40,000</i>
<i>Less foreign tax</i>		<i><u>€14,800</u></i>
<i>Net foreign income</i>		<i>€25,200</i>

Re-grossed at the lower effective rate: €25,200 / 71.11% (100% - 28.89%) = €35,438

<i>Foreign tax credit</i>	<i>€35,438 - €25,200) =</i>	<i>€10,238</i>
<i>Plus</i>	<i>(€40,000 - €35,438) @ 40% =</i>	<i><u>€1,824</u></i>
<i>Total</i>		<i>€12,062</i>

<i>Weekly tax credit for 20 weeks:</i>	<i>€12,062 / 20 weeks =</i>	<i>€603.10</i>
<i>Restricted to weekly amount of Irish tax being deducted</i>		<i>€577.88</i>

In this example, an additional credit of €1,824 is included to compensate the employee for the tax deducted by his employer at his marginal rate on the amount of foreign income in excess the re-grossed income.

Note: While the estimated weekly tax credit is restricted to the amount of Irish tax being deducted on a real-time basis (€577.88 per week in this example), the excess portion of €504.40 (€603.10 - €577.88 = €25.22 x 20 weeks) may be available at the end of the year as a credit against Kian's USC liability arising on this income earned abroad.

Example 8

Ryan is single and earns €2,000 per week (€104,000 per year). His Irish employer assigned him to a non-DTA country for 20 weeks and he paid €14,800 in non-refundable payroll taxes in respect of the €40,000 (€2,000 @ 20 weeks) attributable to his duties exercised in that country. Calculate the effective tax credit to be granted on Ryan's Tax Credit Certificate and reflected in the RPN issued to the employer.

Solution 8

As Ryan was assigned to a non-DTA country, double taxation relief is not available to him. However, Revenue will grant a tax credit at his marginal rate in respect of the foreign tax deducted (unilateral relief).

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Foreign tax deducted		€14,800
Foreign tax credit at marginal rate	€14,800 @ 40% =	€5,920
Weekly tax credit for 20 weeks	€5,920 / 20 weeks =	€296.00

An end of year review should be carried out in all cases where an estimated tax credit is granted in a real-time basis during the tax year.

Further information on the double deduction of tax at source, including the application form (Double Deduction 1) is available on the Revenue website www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-42/42-04-62.pdf to include sample end of year calculations.

6. Foreign Earnings Deduction

A Foreign Earnings Deduction (FED) scheme was introduced in 2012 for employees who are tax resident in Ireland but spend time working abroad in a “Qualifying Country” which is any country listed below.

Brazil	Russia	India	China
South Africa	Algeria	Democratic Republic of Congo	Egypt
Ghana	Kenya	Nigeria	Senegal
Tanzania	Japan	Republic of Korea	Singapore
Saudi Arabia	Qatar	United Arab Emirates	Bahrain
Indonesia	Vietnam	Thailand	Chile
Oman	Kuwait	Mexico	Malaysia
Colombia	Pakistan		

Under FED, an individual can claim a reduction in the amount of his income subject to Irish income tax equal to the proportion of his income which relates to the number of days spent in the qualifying country, subject to a maximum deduction of €35,000. The relief is restricted to income tax only and does not extend to USC or PRSI.

To qualify for relief under FED an employee must spend at least 30 qualifying days in any of the qualifying countries performing his duties of employment in a continuous 12-month period. A qualifying day is one of at least 3 consecutive days spent in its entirety in a qualifying country, where the overall duration was substantially devoted to the performance of employment duties.

Time spent travelling between Ireland and a qualifying country or between qualifying countries is deemed to be time spent in that qualifying country. This means that the day of arrival in the qualifying country can be counted provided the employee left Ireland the previous day and the day of departure from the qualifying country can be counted provided the employee does not arrive back in Ireland until the following day. In addition, time spent travelling on an uninterrupted journey between qualifying countries is considered to be time spent in a qualifying country.

For example, an individual leaves Ireland on a Monday and arrives in China on Tuesday and he departs China on Thursday and returns to Ireland on Friday. Tuesday, Wednesday and Thursday can be counted as 3 qualifying days.

This relief applies to directors of companies which carry on a trade or profession, and to private sector employees.

The relief does not apply to:

- Public service employees paid out of Government funds, to include membership of a board, authority or similar body created by Statute,
- Income from an employment which qualifies for split year residence relief,
- Income from an employment which qualifies for cross-border relief,
- Income from an employment which qualifies for SARP relief.
- Income from an employment which qualifies for Research & Development relief.

FED grants tax relief by reducing the amount of the employee's earnings which are subject to tax in Ireland. A qualifying employee's income can be reduced by the "specified amount" before calculation of his Irish income tax liability. The specified amount is calculated as follows:

$$\frac{D \times E}{F}$$

Where:

- D:** Is the number of qualifying days in the tax year (i.e. days spent in any of the relevant countries)
- E:** Is the individual's total income from the employment for the tax year, including income arising from the exercise of a share option which is liable to tax in Ireland, but after deduction of a qualifying pension contribution to a Revenue approved company pension, personal pension, PRSA or overseas pension plan, excluding the following payments:
- Reimbursement of expenses or the payment of travel and subsistence rates subject to Revenue limits,
 - The notional value of a BIK,
 - Termination payments,
 - Restrictive covenant payments.
- F:** Aggregate number of days in the tax year the employee was employed in a relevant employment (365 days in a full tax year).

The employee's income which is subject to Irish income tax will be reduced by the specified amount, subject to a maximum reduction of €35,000. Based on current legislation, FED is due to come to an end at the end of 2025.

Example 9

Graham is employed by Export Ltd and spent 75 qualifying days in Brazil carrying out his employment duties. He receives the following remuneration package this year:

<i>Annual Salary</i>	<i>€125,000</i>
<i>Bonus</i>	<i>€15,000</i>
<i>Notional value of Company Car</i>	<i>€12,500</i>

Calculate how much relief he will obtain under the FED provisions, and the amount of his income taxable in Ireland.

Solution 9

Total taxable income:

<i>Salary:</i>	<i>€125,000</i>
<i>Bonus:</i>	<i>€15,000</i>
<i>Company Car:</i>	<i>€12,500</i>
	<i>€152,500</i>

CHAPTER 18

Export Ltd should apply PAYE, PRSI & USC to his total income of €152,500.

Graham should contact Revenue following the end of the tax year to claim income tax relief under the FED scheme which is calculated as follows:

<i>Relevant income:</i>	<i>(Salary + Bonus)</i>	<i>€140,000</i>
<i>Specified amount:</i>	<i>(D x E) / F</i>	
	<i>(75 x €140,000) / 365 =</i>	<i>€28,767*</i>
<i>Revised taxable income:</i>	<i>€152,500 - €28,767* =</i>	<i>€123,733</i>

**This is subject to a maximum amount of €35,000.*

PRSI or USC relief is not available under FED. Assuming Graham is a 40% taxpayer, this would give rise to a tax refund of €11,506.80 (€28,767 @ 40%).

7. Social Insurance for Employees posted on Temporary Assignments

Where an employee moves abroad and takes up an employment with a foreign employer, he is subject to the social insurance and tax laws of that country. Such individuals leaving Ireland should bring evidence of their PRSI contributions paid in Ireland, especially where the employee relocates to another European Economic Area (EEA) country or a bilateral agreement country, as it may help them qualify for social insurance benefits in their new country. An EEA country includes the countries of the EU and also Iceland, Norway, Liechtenstein, Switzerland and the UK (excluding Isle of Man and Channel Islands).

Example 10

Sean moved from Ireland to Australia to take a new employment opportunity with an Australian company. Sean is subject to Australian payroll taxes and social insurance in a similar manner to any other Australian employee.

However, where an employee is posted abroad by an Irish employer on a temporary assignment, he can be classified into 3 broad categories as follows, depending on the country he is posted to.

7.1 Employee posted abroad to an EEA Country

Payment of social insurance is compulsory for all employed persons in the EEA. As a general rule, social insurance is payable in the country where the employee works.

However, exceptions to this general rule are provided for under Council Regulations (EU) No 883/2004¹ and 987/2009.² These Regulations provide that a person normally employed in 1 Member State, who is sent by his employer to another Member State, can continue to be subject to the social insurance provisions of the first Member State, provided that the anticipated duration of that work does not exceed 24 months.

Contributions shall be paid to the social security scheme of the sending country and the employer should ensure that the employee remains insured against accidents at work and occupational diseases. The employee and the members of his or her family remain entitled to cash benefits in case of sickness or maternity, family benefits and benefits for accidents at work or occupational

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0883>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R0987&from=GA>

diseases from the sending country. The worker remains insured against unemployment under the scheme of the sending country.

An Irish employer wishing to send an employee to work in another Member State, while continuing to pay Irish social insurance, must firstly obtain a Portable Document A1 from the DSP. The International Postings Section has the authority to issue a Portable Document A1, where the period of overseas work does not exceed 24 months.

If it is known from the outset that the overseas work is longer than 24 months the prior approval of the other Member State should be obtained, under Article 16 of EU Regulation 883/2004, before a Portable Document A1 is issued.

When received, each application is examined to ensure that:

- The employee is actually being posted from Ireland,
- Where the employee is engaged with a view to being posted, she or he must be subject to Irish social insurance legislation for at least one month immediately before posting,
- A direct relationship exists between the employer and the employee during the period of posting,
- The employee is not being posted to replace another posted worker whose period of posting has ended, and
- The employee is employed by the employer posting him or her.

When the Portable Document A1 is granted the employer and employee are informed of the following:

- That the employee remains subject to Irish Social Insurance for the period of the posting and is therefore exempt from social insurance in the Member State where he has been posted,
- The provisions of the posting cease to apply if the direct relationship between the posted worker and the employer which posted him or her is not maintained,
- The Portable Document A1 must be available for inspection by the social security authorities in the Member State where the employee is employed.
- They must notify the International Postings Section of the DSP if there is any change in the circumstances of the posting.

In certain circumstances it is possible to extend the posting period beyond 24 months. If the duration of the work to be done extends beyond the period originally anticipated, owing to unforeseen circumstances, the Social Insurance legislation of the first Member State can continue to apply provided the host Member State agrees to the extension. A Portable Document A1 may be renewed beyond the initial 2 year period if the authorities are satisfied that the posting is temporary. However, if the authorities are not satisfied about the temporary nature of the posting, the Portable Document A1 may not be renewed and social insurance would be payable in the other country, but PRSI would not be payable in Ireland simultaneously.

Where an Irish employee is posted on a temporary assignment to an EEA country, Irish PRSI (employee and employer contributions) must be paid for the first 2 years of that assignment.

A Portable Document A1 is not issued where an employee is being assigned abroad to replace an employee on the expiry of a previous assignment.

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It is advisable to make an application for a Portable Document A1 as soon as it is known that an employee is being posted abroad. An application form can be downloaded from: <https://assets.gov.ie/69405/aa0f059f16814282915b065bb64dfe38.pdf>

When the application is approved by the DSP, a Portable Document A1 will issue. This form should be given to the employee when he is departing from Ireland. If necessary, the employee can present the Portable Document A1 to the authorities of the other EEA country as evidence that no social insurance is payable in that country.

In addition, an employee should apply for a Form S1 (also known as a Portable Document S1) which ensures that the employee will have the same health entitlements in the State to which he is being posted, as are available to nationals of that State. An employee should contact his local HSE office before going to another EU State to obtain a Portable Document S1.

Example 11

Adam is employed by Uisce Ltd in Ireland. He has been temporarily assigned to Spain where he will carry out his employment duties for the next 12 months. Adam and his employer meet the criteria outlined above to qualify for a Portable Document A1. This will ensure that employee and employer PRSI will continue to be paid in Ireland, and Adam will remain insured for DSP benefits. It also confirms that he is exempt from Spanish social insurance.

Example 12

Karine moved from Poland to Ireland 2 years ago and commenced an Irish employment. Due to an ongoing pandemic, Karine requested that she be permitted to return to Poland and work remotely on an ongoing basis from Poland as her role is suitable for remote working. This will reunite Karine with her family.

It would appear that Karine and her employer will be liable to Polish social insurance as this appears to be a permanent arrangement as opposed to a temporary assignment, and Karine will carry out her duties in Poland. In addition, an obligation to register as an employer and deduct payroll taxes in Poland may arise. Karine's employer should be aware of the consequences of agreeing to this request and seek advice as necessary.

7.2 Multi-State Workers

Payment of social insurance is compulsory for all employed persons in the EEA countries. As a general rule, as outlined in EU Regulation 883/04, employees shall be subject to the legislation of a single Member State only, which is the country in which they work.

Special rules apply to individual's normally employed in the territory of 2 or more Member States:

- The legislation of the Member State of residence if the employee works for one, or more employer(s), and he pursues a substantial part of his or her activity in the Member State of residence,
- Otherwise the circumstances of the employee and his employer, will be decided upon by the International Postings Section with reference to the appropriate criteria specified in the Regulations.

A person who normally pursues an activity as an employee in 2 or more Member States is a person who:

- While maintaining an activity in 1 Member State, simultaneously exercises a separate activity in 1 or more other Member States, irrespective of the duration or nature of that separate activity, or
- Continuously pursues alternating activities, with the exception of marginal activities, in 2 or more Member States, irrespective of the frequency or regularity of the alternation.

Substantial activity pursued in a Member State means that a quantitatively substantial part of all the activities of the employee is pursued there, without this necessarily being a major part of those activities. A 25% activity level is an indicator that a substantial part of all the activities of the employee is being pursued in a Member State.

An application for a Portable Document A1 must be made to the social security authorities in the employee's country of residence. The authority in the Member State of residence must decide which Member State's legislation should apply. This decision is made initially on a provisional basis and the institution in the country of residence must inform each Member State where an activity is performed and where the employer's registered office is located. If the decision is not contested by any Member State within two months, the provisional decision becomes definitive and a Portable Document A1 is issued.

Example 13

Charlie is employed by Bainne Ltd in Ireland. Due to the company expanding into mainland UK, Charlie will be required to work in the UK for 1 day a week and he will work in Ireland for 4 days a week. Charlie and his family live in Ireland.

Charlie will be subject to Irish PRSI on his total earnings as he performs his substantive duties in Ireland.

Example 14

Jacques has been employed in Ireland for several years. As his parents are getting elderly and he would like to raise his family in the south of France, he requested that he be allowed to work remotely from France. His employer has no problem with this as long as he attends the office in Dublin for meetings every second Friday which Jacques would have to do at his own expense.

It would appear that Jacques and his employer will be liable to French social insurance as Jacques will be a multi-state worker and he performs substantive duties in France (i.e. 90% of his duties will be carried out in France with only 10% carried out in Ireland). In addition, an obligation to register as an employer and deduct payroll taxes in France may arise. Jacques's employer should be aware of the consequences of agreeing to this request and seek advice as necessary.

7.3 Employees posted to a Bilateral Agreement Country

A social insurance bilateral agreement is a social security agreement between two countries. It protects State pensions and benefits for employees who have worked in both countries. It does this by allowing periods of social insurance in one country to be used when claiming entitlements in the other country.

Where an employee is posted abroad on a temporary assignment to a bilateral agreement country, Irish PRSI is payable for the duration specified in the agreement with each country as follows:

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Australia	4 years	New Zealand	2 years
USA	5 years	Quebec	2 years
Canada	2 years	UK - Isle of Man and Channel Islands	3 years
Republic of Korea	5 years	Japan	5 years

These periods may be extended, however the DSP and the authorities of the other country will have to be satisfied that the posting is temporary, if Irish PRSI contributions are to continue to be paid. A Certificate (generally referred to as a Certificate of Coverage) must be obtained from the DSP which will ensure that no social insurance is payable in the country in which the individual is posted. Further information is available at: <https://www.gov.ie/en/publication/3df362-operational-guidelines-prsi-prsi-special-collection-system/>

The qualifying conditions for postings under the various Bilateral Agreements are broadly similar. The principal condition is that the posted person must be subject to Irish social insurance legislation prior to posting. In addition, the employer must be resident or have a place of business in Ireland and the posting itself must be of a temporary nature.

Example 15

Ben is employed by Rince Ltd in Ireland. He has been temporarily assigned to Canada where he will carry out his employment duties for the next 18 months. Ben and his employer meet the criteria outlined above to qualify for a Certificate of Coverage. This will ensure that employee and employer PRSI will continue to be paid in Ireland, and Ben will remain insured for DSP benefits. It also confirms that he is exempt from Canadian social insurance.

7.4 Employee posted to a non-EEA and non-Bilateral Agreement Country

Where an employee is posted abroad on a temporary assignment to a non-EEA country with which Ireland has no bilateral agreement, Irish PRSI is payable for the first 12 months for which the employee is posted abroad. The employee or employer should contact the PRSI Special Collections Section and request a Certificate of Retention to Irish Social Insurance while working abroad. This period may be extended on request, generally for periods of up to 5 years subject to the agreement of the Department of Social Protection.

Where an employee is no longer compulsory insured in Ireland or is not retained on the Irish PRSI system, the employee has the option of making voluntary PRSI contributions to protect or enhance his entitlement to long-term social welfare benefits such as the State Pension Contributory.

In the event that the employee was made redundant, where the employee is compulsory insured or is retained on the Irish PRSI system, they remain in insurable employment and could qualify for statutory redundancy subject to the normal qualifying criteria. However, voluntary contributions are not considered in determining an individual's eligibility for statutory redundancy. Voluntary Contributions are covered in detail in the chapter entitled Advanced PRSI.

Regardless of whether Irish PRSI is payable or not, such countries may impose their own social insurance rules from the beginning of the assignment.

Example 16

Dan is employed by Cus Ltd in Ireland. He has been temporarily assigned to Brazil where he will carry out his employment duties for the next 2 years.

Dan and his employer are liable to pay Irish PRSI contributions for the first 12 months. If desired, they could make a request to the DSP for a Certificate of Retention to retain Dan on the Irish Social insurance system for the remainder of his assignment. Where granted, employee and employer PRSI would continue to be payable in Ireland. This may be of benefit to Dan to protect his entitlement to social welfare benefits.

Regardless of the obligation to pay Irish PRSI, an obligation to pay social insurance in Brazil may also arise.

7.5 Payment of PRSI Contributions by the Employer

Where an employee is assigned abroad on a temporary assignment Irish PRSI (employee and employer) is payable for an initial period of time. Where an employer holds a PAYE Exclusion Order in respect of an employee, Irish PRSI should be returned by the employer on the Payroll Submission where the employer holds any of the following in respect of the employee:

- Form A1 for employees assigned to an EEA State
- Certificate of Coverage for employees assigned to a bilateral agreement country
- Certificate of Retention for employees assigned to a non-bilateral agreement country

Where Irish PRSI is no longer payable under any of the above scenarios, if the individual wishes to make a voluntary contribution, this will be payable directly by the individual to the PRSI Special Collections section of the DSP. Voluntary Contributions are covered in the chapter entitled Advanced PRSI.

CHAPTER 18

PAYE Exclusion Order

PAYE EXCLUSION ORDER		
Notice to Employers under Section 984, TCA 1997 - Individuals Within Section 822, TCA 1997		
		EXCLUSION ORDER NUMBER
SAMPLE		
Employer's Registered Number <input type="text"/>		
<p>The emoluments paid to the person named below should not be subjected to deductions of INCOME TAX or USC under the PAYE system with effect from: <input type="text"/> D <input type="text"/> O <input type="text"/> M <input type="text"/> Y <input type="text"/> Y <input type="text"/> Y</p>		
PRSI Obligations Employers please note, this permission not to deduct INCOME TAX and USC applies to PAYE only. You may still have a legal obligation to pay PRSI in respect of this employment/occupational pension. To clarify, please contact: Special Collection Section, Department of Social Protection, Government Buildings, Cork Road, Waterford. LoCall: 1890 60 90 90 (from the Republic of Ireland only) Telephone: +353 1 4715898 (from Northern Ireland and overseas) e-mail: e101spc@welfare.ie		
Name	<input type="text"/>	
PPS Number	<input type="text"/>	
Address	<input type="text"/> <input type="text"/> <input type="text"/>	
This Exclusion Order has effect until <input type="text"/> and only so long as the employee resides abroad / the duties of the employment are performed abroad.		
Signed <input type="text"/>	Inspector of Taxes	
District <input type="text"/>		
Date <input type="text"/>		
PAYE Excl. 1 (Part 1)		
RPC005497_EN_PR_P_2		



Portable Document A1

	 	Coordination of Social Security Systems Certificate concerning the Social Security legislation which applies to the holder <small>EU Regulations 883/2004 and 987/2009 (*)</small>																								
INFORMATION FOR THE HOLDER																										
<p>This certificate concerns the social security legislation which applies to you and confirms that you have no obligations to pay contributions in another State.</p> <p>Before you leave the State where you are insured to go to another State to work, make sure you have the documents which entitle you to receive the necessary benefits in kind (e.g. medical care, treatment in hospital, and other) in the State where you are working.</p> <ul style="list-style-type: none"> • If you are staying temporarily in the State where you are working, ask your health care institution for the European Health Insurance Card (EHIC). You must show this card to your health care provider if you need benefits in kind during your stay. • If you are going to be living in the State where you are working, ask your health care institution for the S1 document and submit it as soon as possible to the competent health care institution of the place you are going to work (**). <p>Provisionally the insurance institution in the State of stay will also provide special benefits in the event of an accident at work or an occupational disease.</p>																										
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<small>(*) Regulations (EC) No 883/2004, Articles 11 through 10 and Regulation (EC) No 987/2009, Article 19. (** For Spain, Sweden and Portugal, the certificate must be handed over to, respectively, the head provincial offices of social security National Institute (INSS), the social insurance institution and the social security institution of the place of residence. (***) Information given to the institution by the holder when this is not known by the institution.</small>																										
<small>©European Commission</small>																										
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<p style="text-align: center; font-weight: bold;">Certificate concerning the Social Security legislation which applies to the holder</p> <p>3. STATUS CONFIRMATION OF YOUR POSITION</p> <table border="0"><tr><td style="vertical-align: top; width: 50%;"><input type="checkbox"/> 3.1 Posted employed person</td><td style="vertical-align: top; width: 50%;"><input type="checkbox"/> 3.2 Employed, working in two or more States</td></tr><tr><td><input type="checkbox"/> 3.3 Posted self-employed person</td><td><input type="checkbox"/> 3.4 Self-employed, working in two or more States</td></tr><tr><td><input type="checkbox"/> 3.5 Civil servant</td><td><input type="checkbox"/> 3.6 Contract staff</td></tr><tr><td><input type="checkbox"/> 3.7 Mariner</td><td><input type="checkbox"/> 3.8 Working as an employed person and as a self-employed person in different States</td></tr><tr><td><input type="checkbox"/> 3.9 Working as a civil servant in one State and as an employed/self-employed person in one or more other States</td><td><input type="checkbox"/> 3.10 Flight or cabin crew member</td></tr><tr><td><input type="checkbox"/> 3.11 Exception</td><td><input type="checkbox"/> 3.12 Working as an employed / self-employed person in the State referred to under 2.1</td></tr></table> <p>4. DETAILS OF EMPLOYER / SELF EMPLOYMENT</p> <table border="0"><tr><td style="width: 50%;"><input type="checkbox"/> 4.1.1 Employee</td><td style="width: 50%;"><input type="checkbox"/> 4.1.2 Self-employed activity</td></tr><tr><td>4.2 Employer/self-employed activity code</td><td></td></tr><tr><td>4.3 Name or business name</td><td></td></tr><tr><td>4.4 Registered address</td><td></td></tr><tr><td>4.4.1 Street, N°</td><td>4.4.2 Country code</td></tr><tr><td>4.4.3 Town</td><td>4.4.4 Post code</td></tr></table> <p>5. DETAILS OF EMPLOYER / SELF EMPLOYMENT WHEN AN ACTIVITY IS PURSUED</p> <p>5.1 Name(s) or business name(s) and code(s) of the firm(s) or ship(s) or the home base(s) where you will be employed</p>			<input type="checkbox"/> 3.1 Posted employed person	<input type="checkbox"/> 3.2 Employed, working in two or more States	<input type="checkbox"/> 3.3 Posted self-employed person	<input type="checkbox"/> 3.4 Self-employed, working in two or more States	<input type="checkbox"/> 3.5 Civil servant	<input type="checkbox"/> 3.6 Contract staff	<input type="checkbox"/> 3.7 Mariner	<input type="checkbox"/> 3.8 Working as an employed person and as a self-employed person in different States	<input type="checkbox"/> 3.9 Working as a civil servant in one State and as an employed/self-employed person in one or more other States	<input type="checkbox"/> 3.10 Flight or cabin crew member	<input type="checkbox"/> 3.11 Exception	<input type="checkbox"/> 3.12 Working as an employed / self-employed person in the State referred to under 2.1	<input type="checkbox"/> 4.1.1 Employee	<input type="checkbox"/> 4.1.2 Self-employed activity	4.2 Employer/self-employed activity code		4.3 Name or business name		4.4 Registered address		4.4.1 Street, N°	4.4.2 Country code	4.4.3 Town	4.4.4 Post code
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Coordination of Social Security Systems

Certificate concerning the Social Security legislation which applies to the holder

5. DETAILS OF EMPLOYER / SELF EMPLOYMENT WHEN AN ACTIVITY IS PURSUED

5.2 Address(es) or name(s) of ship(s) or the home base(s) where you will be (self) employed in the 'host' State(s)

5.3 Or no fixed address in State(s) of (self)employment

6. INSTITUTION COMPLETING THE FORM

6.1 Name
6.2 Street, N°
6.3 Town
6.4 Post code
6.5 Country code
6.6 Institution ID
6.7 Office fax N°
6.8 Office phone N°
6.9 E-mail
6.10 Date
6.11 Signature

STAMP

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CHAPTER 19

Tax Equalisation and Global Mobility

- 1. Tax Equalisation for Internationally Mobile Employees**
 - 2. Global Mobility Policy**
 - 3. Revenue Compliance Interventions**
 - 4. Posting of Workers Regulations**
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1. Tax Equalisation for Internationally Mobile Employees

Many employers operate a Tax Equalisation Policy for internationally mobile employees. While the details of any such arrangements is a matter between an employer and an employee, the general aim is to ensure that an employee is financially no worse off or better off as a result of the assignment (i.e. to ensure the assignment is cost neutral for the employee in that the employee will be in the same financial position as if he had carried out his duties and liable to tax in his home country). This is achieved using a Tax Equalisation Policy operated through payroll. It is common practice for employers to cover additional costs associated with assignment such as travel, accommodation, cost of living, etc. The policy should be documented and will generally form part of the terms and conditions of employment for internationally mobile employees.

The Tax Equalisation Policy should cover short term assignments where the employee incurs tax in both the host country and the home country and longer assignments where the employee becomes non-resident in the home country for tax purposes.

Where an employee performs some duties abroad but remains resident in Ireland for tax purposes, Revenue permits the operation of a credit for non-refundable foreign tax through payroll on a real-time basis to eliminate double taxation. This can then be finalised at the end of the tax year by submitting a tax return.

Where an employee becomes non-resident for tax purposes, Revenue will issue a PAYE Exclusion Order. The Tax Equalisation Policy is generally operated by making a deduction, often referred to as “Hypo tax” (hypothetical tax) in the payroll of the home country. This deduction is recorded as a voluntary deduction on an employee’s payslip and is generally retained by the employer. As the employee is exercising his duties abroad, employment taxes will generally arise in the host country. One of the terms of the policy will be the requirement for tax returns to be submitted in both the home country and the host country. Based on the tax calculations for the year, any difference in the Hypo tax in comparison to the actual liability will either be refunded to the employee or repaid to the employer.

Employers operating such schemes generally provide employees with assistance in the submission of their tax returns. This constitutes a taxable benefit in kind for the employee and should be reflected in the notional pay.

Where an employee is assigned to Ireland, the income attributable to the performance of the duties of a non-Irish employment in the State is chargeable to tax under Schedule E and, accordingly,

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the appropriate deductions must be made under the PAYE system. Any method of calculation used by an employer must satisfy this requirement. A shadow payroll is generally operated in Ireland to collect the taxes due under the PAYE system.

Income means emoluments (i.e. anything chargeable to tax under Schedule E) and includes any bonus, commission, benefit or perquisite, etc., and any tax paid by an employer on behalf of an employee attributable to the performance of the duties in the State. Where an employer pays tax on behalf of an employee under a tax equalisation arrangement, a gross up should be applied in calculating the tax due under the PAYE system.

PAYE should be calculated on an ongoing basis throughout the year in line with salary payments in the home country.

Example 1

George is a US citizen, single and is employed by a multinational company located in San Francisco. He has been assigned to work for an Irish subsidiary company for a period of 2 years commencing in January 2023. George will continue to be paid his full salary in the U.S. for the period of his assignment.

The company operates a Tax Equalisation Policy to ensure George is no worse off or better off when abroad. The euro equivalent of his salary after deduction of taxes in the U.S. is €80,000.

Show the Irish tax calculation required to ensure that George receives the same net salary as he would in the U.S.

Note: For the purposes of this example any employer and employee PRSI can be ignored as it is assumed that the employee will be covered by a Certificate of Coverage and remain liable to U.S. social insurance.

Solution 1

In order to obtain a net pay figure of €80,000, a regrossed calculation will have to be performed through the Irish shadow payroll. Based on a single person's tax credits and SRCOP, we have regrossed the payment as follows:

<i>Regrossed Salary</i>		<i>€125,471.68</i>
<i>SRCP</i>		<i>€40,000.00</i>
<i>Gross tax</i>	<i>€40,000.00 @ 20% =</i>	<i>€8,000.00</i>
	<i>€85,471.68 @ 40% =</i>	<i>€34,188.67</i>
		<i>€42,188.67</i>
<i>Less tax credits</i>	<i>Single person</i>	<i>(€1,775.00)</i>
	<i>PAYE tax credit</i>	<i>(€1,775.00)</i>
<i>Income tax liability</i>		<i>€38,638.67</i>
 <i>USC</i>		
<i>Income up to Rate 1 COP</i>	<i>€12,012 @ 0.5% =</i>	<i>€60.06</i>
<i>Excess pay up to Rate 2 COP</i>	<i>€10,908 @ 2% =</i>	<i>€218.16</i>
<i>Excess pay up to Rate 3 COP</i>	<i>€47,124 @ 4.5% =</i>	<i>€2,120.58</i>
<i>Balance of pay at Rate 3</i>	<i>€55,427.68 @ 8% =</i>	<i>€4,434.21</i>
<i>Total</i>		<i>€6,833.01</i>

<i>Net take home pay</i>		
<i>Regrossed Salary</i>		<i>€125,471.68</i>
<i>Less: PAYE</i>	<i>€38,638.67</i>	
<i>USC</i>	<u><i>€6,833.01</i></u>	<i>€45,471.68</i>
<i>Net pay</i>		<i>€80,000.00</i>
<i>Net Deduction (as George is paid in the US)</i>		<u><i>€80,000.00</i></u>
<i>Amount paid in Ireland</i>		<i>€0.00</i>

As George will remain on the US payroll, he will not receive any payment from the Irish payroll. This is a shadow payroll to collect the Irish tax and USC due. Assuming George is paid monthly, a payslip should be processed in Ireland each month with gross pay of €10,455.97 (€125,471.68 / 12 months) to collect the Income tax and USC due, with a corresponding net deduction of €6,666.67 (€80,000 / 12 months) to reduce the net pay to zero. Any Hypo tax to be deducted in this example will be deductible through the U.S. payroll. This example does not take account of SARP relief (Special Assignee Relief Programme) which George may be entitled to.

Example 2

Mitchell is a US citizen, single and is employed by a multinational company located in California. He has been assigned to work for an Irish subsidiary company for a period of 3 years commencing in January 2023. Mitchell will continue to be paid his full salary in the U.S. for the period of his assignment.

The company operates a Tax Equalisation Policy to ensure Mitchell is no worse off or better off when abroad. The euro equivalent of his salary after deduction of taxes in the U.S. is €75,000.

While in Ireland, Mitchell will be provided with a company car which has a notional value of €9,000. He will make a contribution of €5,000 to a qualifying overseas pension scheme in the U.S. The company will pay €10,000 per year for private rented accommodation and €750 per year to a tax practitioner for providing tax advice and completion of tax returns for him.

Show the Irish tax calculation required to ensure that Mitchell receives the same net salary as he would in the U.S.

Note: For the purposes of this example any employer and employee PRSI can be ignored as it is assumed that the employee will be covered by a Certificate of Coverage and remain liable to U.S. social insurance.

Solution 2

In order to obtain a net pay figure of €75,000, a regrossed calculation will have to be performed through the Irish shadow payroll. Based on a single person's tax credits and SRCOP, we have regrossed the payment as follows:

<i>Regrossed Salary</i>	<i>€139,856.30</i>
<i>BIK (Car + Accommodation + Tax advice)</i>	<u><i>€19,750.00</i></u>
<i>Gross Pay (Pay for USC Purposes)</i>	<i>€159,606.30</i>
<i>Less Pension Contribution</i>	<u><i>(€5,000.00)</i></u>
<i>Pay for tax purposes</i>	<i>€154,606.30</i>
<i>SRCP</i>	<i>€40,000.00</i>

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<i>Gross tax</i>	$\text{€}40,000.00 @ 20\% =$	$\text{€}8,000.00$
	$\text{€}114,606.30 @ 40\% =$	<u>$\text{€}45,842.52$</u>
		$\text{€}53,842.52$
<i>Less tax credits</i>	<i>Single person</i>	$(\text{€}1,775.00)$
	<i>PAYE tax credit</i>	<u>$(\text{€}1,775.00)$</u>
<i>Income tax liability</i>		$\text{€}50,292.52$
 <i>USC</i>		
<i>Income up to Rate 1 COP</i>	$\text{€}12,012 @ 0.5\% =$	$\text{€}60.06$
<i>Excess pay up to Rate 2 COP</i>	$\text{€}10,908 @ 2\% =$	$\text{€}218.16$
<i>Excess pay up to Rate 3 COP</i>	$\text{€}47,124 @ 4.5\% =$	$\text{€}2,120.58$
<i>Balance of pay at Rate 3</i>	$\text{€}89,562.30 @ 8\% =$	<u>$\text{€}7,164.98$</u>
<i>Total</i>		$\text{€}9,563.78$
 <i>Net take home pay</i>		
<i>Gross Pay</i>		$\text{€}159,606.30$
<i>Less: Pension</i>	$\text{€}5,000.00$	
<i>BIK Adjustment</i>	$\text{€}19,750.00$	
<i>Income tax</i>	$\text{€}50,292.52$	
<i>USC</i>	<u>$\text{€}9,563.78$</u>	$\text{€}84,606.30$
<i>Net pay</i>		$\text{€}75,000.00$
<i>Net Deduction (as Mitchell is paid in the US)</i>		<u>$\text{€}75,000.00$</u>
<i>Amount paid in Ireland</i>		$\text{€}0.00$

As Mitchell will remain on the US payroll, he will not receive any payment from the Irish payroll. This is a shadow payroll to collect the Irish tax and USC due. Assuming Mitchell is paid monthly, a payslip should be processed in Ireland each month with:

<i>Regrossed Salary</i>	$\text{€}139,856.30 / 12 =$	$\text{€}11,654.69$
<i>BIK</i>	$\text{€}19,750 / 12 =$	$\text{€}1,645.83$
<i>Pension Contribution</i>	$\text{€}5,000 / 12 =$	$\text{€}416.67$
<i>Income tax</i>	$\text{€}50,292.52 / 12 =$	$\text{€}4,191.04$
<i>USC</i>	$\text{€}9,563.78 / 12 =$	$\text{€}796.98$
<i>BIK Adjustment</i>	$\text{€}19,750 / 12 =$	$\text{€}1,645.83$
<i>Net deduction</i>	$\text{€}75,000 / 12 =$	$\text{€}6,250.00$

Any Hypo tax to be deducted in this example will be deductible through the U.S. payroll. This example does not take account of SARP relief (Special Assignee Relief Programme) which Mitchell may be entitled to.

Example 3

Continuing with Example 2, calculate the regrossed payment assuming Mitchell qualifies for SARP relief.

Example 3

In order to obtain a net pay figure of €75,000, a regrossed calculation will have to be performed through the Irish shadow payroll. Based on a single person's tax credits and SRCOP, we have regrossed the payment as follows:

Tax Equalisation and Global Mobility

<i>Regrossed Salary</i>	<i>€115,457.74</i>
<i>BIK (Car + Accommodation + Tax advice)</i>	<i><u>€19,750.00</u></i>
<i>Gross Pay (Pay for USC Purposes)</i>	<i>€135,207.74</i>
<i>Less SARP Relief</i>	<i>(€9,062.32)</i>
<i>Less Pension Contribution</i>	<i><u>(€5,000.00)</u></i>
<i>Pay for tax purposes</i>	<i>€121,145.41</i>
 <i>SRCOP</i>	 <i>€40,000.00</i>
 <i>Gross tax</i>	 <i>€40,000.00 @ 20% =</i>
	<i>€8,000.00</i>
	<i>€81,145.41 @ 40% =</i>
	<i><u>€32,458.17</u></i>
	<i>€40,458.17</i>
<i>Less tax credits</i>	<i>Single person</i>
	<i>(€1,775.00)</i>
	<i>PAYE tax credit</i>
	<i><u>(€1,775.00)</u></i>
<i>Income tax liability</i>	<i>€36,908.17</i>
 <i>USC</i>	
<i>Income up to Rate 1 COP</i>	<i>€12,012 @ 0.5% =</i>
	<i>€60.06</i>
<i>Excess pay up to Rate 2 COP</i>	<i>€10,908 @ 2% =</i>
	<i>€218.16</i>
<i>Excess pay up to Rate 3 COP</i>	<i>€47,124 @ 4.5% =</i>
	<i>€2,120.58</i>
<i>Balance of pay at Rate 3</i>	<i>€65,163.74 @ 8% =</i>
	<i><u>€5,213.09</u></i>
<i>Total</i>	<i>€7,611.89</i>
 <i>Net take home pay</i>	
<i>Gross Pay</i>	<i>€135,207.74</i>
<i>Add SARP Relief Payment</i>	<i>€9,062.32</i>
<i>Less: Pension</i>	<i>€5,000.00</i>
<i>BIK Adjustment</i>	<i>€19,750.00</i>
<i>Income tax</i>	<i>€36,908.17</i>
<i>USC</i>	<i><u>€7,611.89</u></i>
<i>Net pay</i>	<i>€69,270.06</i>
<i>Net Deduction (as Mitchell is paid in the US)</i>	<i><u>€75,000.00</u></i>
<i>Amount paid in Ireland</i>	<i>€0.00</i>

As Mitchell will remain on the US payroll, he will not receive any payment from the Irish payroll. This is a shadow payroll to collect the Irish tax and USC due. Assuming Mitchell is paid monthly, a payslip should be processed in Ireland each month as follows:

<i>Regrossed Salary</i>	<i>€115,457.74 / 12 =</i>	<i>€9,621.48</i>
<i>BIK</i>	<i>€19,750 / 12 =</i>	<i>€1,645.83</i>
<i>SARP Payment (Non-taxable)</i>	<i>€9,062.32 / 12 =</i>	<i>€755.19</i>
<i>Pension Contribution</i>	<i>€5,000 / 12 =</i>	<i>€416.67</i>
<i>Income tax</i>	<i>€36,908.17 / 12 =</i>	<i>€3,075.68</i>
<i>USC</i>	<i>€7,611.89 / 12 =</i>	<i>€634.32</i>
<i>BIK Adjustment</i>	<i>€19,750 / 12 =</i>	<i>€1,645.83</i>
<i>Net deduction</i>	<i>€75,000 / 12 =</i>	<i>€6,250.00</i>

Any Hypo tax to be deducted in this example will be deductible through the U.S. payroll.

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Example 4

Michael is an Irish citizen, single and is employed by a multinational company in Dublin. He has been assigned to work in the US for a period of 2 years commencing in January 2023. Michael will continue to be paid his full salary in Ireland for the period of his assignment.

The company operates a Tax Equalisation Policy to ensure Michael is no worse off or better off when abroad.

Michael is paid an annual salary of €90,000. He is provided with medical insurance which has a gross premium of €1,500 and he contributes €3,000 to his employer's Revenue approved pension scheme. Michael will be paid a cost of living allowance (COLA) of €10,000 each year he is in the US.

Calculate the Hypo tax to be deducted in the Irish Payroll.

Note: In this example, assuming a Certificate of Coverage has been obtained from the DSP, Michael will continue to pay PRSI in Ireland and be exempt from social insurance in the US.

Solution 4

Salary		€90,000.00
COLA		€10,000.00
BIK Medical Insurance		<u>€1,500.00</u>
Gross Pay (for USC & PRSI purposes)		€101,500.00
Less Pension Contribution		(€3,000.00)
Pay for tax purposes		€98,500.00
 SRCOP		 €40,000.00
 Gross tax	€40,000.00 @ 20% =	€8,000.00
	€58,500.00 @ 40% =	<u>€23,400.00</u>
		<u>€31,400.00</u>
 Less tax credits	Single person	(€1,775.00)
	PAYE tax credit	(€1,775.00)
	TRS on Medical Insurance	<u>(€200.00)</u>
 Income tax liability		€27,650.00
 USC		
Income up to Rate 1 COP	€12,012 @ 0.5% =	€60.06
Excess pay up to Rate 2 COP	€10,908 @ 2% =	€218.16
Excess pay up to Rate 3 COP	€47,124 @ 4.5% =	€2,120.58
Balance of pay at Rate 3	€31,456 @ 8% =	<u>€2,516.48</u>
Total		€4,915.28
 Hypo tax (Income tax + USC)	€27,650 + €4,915.28 =	€32,565.28
 Employee PRSI	€101,500 @ 4% =	€4,060.00
Employer PRSI	€101,500 @ 11.05% =	€11,215.75
 Net take home pay		
Salary		€90,000.00

<i>COLA</i>		<i>€10,000.00</i>
<i>BIK – Medical Insurance</i>		<i>€1,500.00</i>
<i>Less: Pension</i>	<i>€3,000.00</i>	
<i> BIK Adjustment</i>	<i>€1,500.00</i>	
<i> Hypo tax</i>	<i>€32,565.28</i>	
<i> EE PRSI</i>	<i>€4,060.00</i>	<i>€41,125.28</i>
<i>Net pay</i>		<i>€60,374.72</i>

As Michael will not be resident in Ireland for tax purposes, his employer should apply for a PAYE Exclusion Order. Instead of a deduction for PAYE and USC appearing on Michael's payslip, Hypo tax should be recorded as a voluntary deduction on Michael's payslip and processed each pay period. This figure should be reviewed each period to take account of any changes in the payments or benefits. The Income tax and USC is calculated above for illustrative purposes to determine the Hypo tax amount. As Hypo tax is a non-statutory deduction, the manner in which it is calculated is a matter for the employer and employee.

Assuming Michael is paid monthly, a payslip should be processed in Ireland each month as follows:

<i>Salary</i>	<i>€90,000 / 12 =</i>	<i>€7,500.00</i>
<i>COLA</i>	<i>€10,000 / 12 =</i>	<i>€833.33</i>
<i>BIK</i>	<i>€1,500 / 12 =</i>	<i>€125.00</i>
<i>Pension Contribution</i>	<i>€3,000 / 12 =</i>	<i>€250.00</i>
<i>EE PRSI</i>	<i>€4,060 / 12 =</i>	<i>€338.33</i>
<i>Hypo tax (voluntary deduction)</i>	<i>€32,565.28 / 12 =</i>	<i>€2,713.77</i>
<i>BIK Adjustment</i>	<i>€1,500 / 12 =</i>	<i>€125.00</i>
<i>Net Pay</i>	<i>€60,374.72 / 12 =</i>	<i>€5,031.23</i>

It is likely that a shadow payroll may have to be processed in the US to collect the US taxes due. The cost of living allowance is not included in the calculation above as the employer will bear the liability for any US taxes arising on this allowance.

2. Global Mobility Policy

As outlined in the chapter entitled "Taxation of Outbound Assignees", employers are required to provide an employee with basic information relating to their assignment where the employee is temporarily assigned to work outside of Ireland for at least 1 month. However, this information would not be sufficient to cover the range of issues which arise, and for that reason employers with internationally mobile employees are encouraged to have a documented Global Mobility Policy to cover all aspects of the assignment and repatriation. The assignee should be briefed on all aspects of the policy to avoid any misunderstandings.

The following is a summary of some of the main points which may be included in a Global Mobility Policy.

Application

The Policy should be clear as to who it applies to which may be determined by the duration of the assignment to include any terms relating to the extension of the duration of the assignment. The policy should make clear how any exceptions to the policy are dealt with.

CHAPTER 19

Employment Terms and Conditions

A separate letter may be required to notify the employee of the terms and condition relating to his assignment to outline factors such as the home and host countries, anticipated duration of the assignment, details of pay and benefits, reporting requirements, notice period, currency for wage payments, etc. This letter should be signed by both the employer and employee prior to departure.

Immigration Requirements

The policy should outline the requirement for employees to hold the required visas and work permits for both themselves and for any accompanying family members prior to the commencement of the assignment.

Pre-Assignment Medical

It is recommended that a medical examination is carried out in advance of the planned departure to ensure the assignee is fit to travel. Depending on where the employee is travelling to, vaccinations may be required.

Transfer and Relocation Costs

The policy should outline what flights will be paid for by the employer (e.g. Outbound flight at the beginning of the assignment and the return flight at the end of the assignment, return visits to the home country, etc.). It should also cover relocation costs for personal goods.

Disturbance Payments

If the employer pays a round sum disturbance payment, the terms and conditions of this payment should be included in the policy.

Accommodation

The policy should outline the conditions in relation to the provision of accommodation in the host country and what cost will be incurred by the employer and those to be incurred by the employee.

Benefits

The policy should outline any benefits which may be provided to the employee such as health care, company car, education, return trips home, etc.

Remuneration

The terms relating to the calculation and payment of salaries for the duration of the assignment should be clearly outlined. This should include any additional allowances payable to the employee, such as a cost of living allowance. This should include whether the employee will be paid in the home country or the host country and the exchange rate to apply where the employee is paid in another currency.

Tax Policy

Where a Tax Equalisation Policy is operated by the employer the terms of this should be included in the Global Mobility Policy or provided to the employee separately. This should include a clause requiring the employee to submit tax returns in the home and host country as necessary.

Professional Assistance

The policy should document any assistance provided to the employee which may include assistance with filing tax returns, social insurance, relocation services, immigration services, etc.

Termination of Assignment / Repatriation

Conditions relating to the termination of the assignment by either party should be clearly outlined as well as any terms relating to the repatriation of the employee on expiry of the assignment.

3. Revenue Compliance Interventions

Revenue has stated that during a Compliance Intervention they will focus on certain risk areas which apply to assignees who perform their duties of employment in Ireland under a foreign employment contract. This will apply whether the employer has a tax equalisation strategy or not.

Some of these risk areas highlighted by Revenue include the following:

- Ensuring the foreign employer has complied with Irish PAYE withholding requirements.
- How the employer treated expenses or relocation costs for PAYE purposes.
- Details of any shadow payrolls operated.
- Records are kept of working days the employee spent in Ireland.
- Any benefits provided to the employee in Ireland and the taxation of these benefits.
- How contractual benefits or payments the employee is entitled to are treated for tax purposes.
- How bonus payments are taxed having regard to published Revenue guidance.
- How share based remuneration is treated for tax purposes.
- Is there an exemption from social insurance and if an A1 or Certificate of Coverage has been provided.
- Have any benefits been provided to the employee's family.

4. Posting of Workers Regulations

The **European Union (Posting of Workers) Regulations 2016** were signed into law on 27th July 2016 and provides for a number of measures to strengthen employment rights for posted workers. A posted worker is a person who is employed in one EU Member State but is posted to work in another EU Member State on a temporary basis.

The regulations transpose into Irish law EU Directive 2014/67/EU. Some of the key provisions in the Regulations include:

- A service provider, located in an EU State outside Ireland, who posts workers to Ireland on a temporary basis, must notify the Workplace Relations Commission (WRC) of the posting no later than the day on which he commences providing the service and provide the following details in respect of each employee:
 - a) Name and address of the service provider,
 - b) Name and address of contact person in the service provider,
 - c) Address of the work location in Ireland,
 - d) Employee's name, address, date of birth and social insurance number,
 - e) Job description or job title,
 - f) Nationality,
 - g) Details of non-EEA national's employment permit (if applicable),
 - h) Start date and projected end date of the project,
 - i) Gross weekly pay and hourly rate of pay, and
 - j) Total number of weekly hours to be worked.

When the service provider complies with all of the requirements above, the WRC will issue an acknowledgement to the service provider.

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In addition to providing the records above, the service provider must keep a record of:

- The contract of employment or written statement of terms and conditions of employment which must, at least be the equivalent to the requirements of the **Terms of Employment (Information) Act 1994**.
- Payslips and proof of payment of wages, and
- Time sheets confirming the starting and finishing time and duration of daily working hours,

which must be made available to the WRC, in English, within 1 month of a request being made by the WRC.

A service provider who fails to comply with any of the requirements above will commit an offence and will be liable on summary conviction to a Class A fine not exceeding €5,000, or conviction on indictment to a fine not exceeding €50,000.

A similar obligation exists in respect of Irish employers posting employees to other EU Member States and they are required to register the posting with the relevant authority in that Member State, details of which can be found at https://europa.eu/youreurope/citizens/national-contact-points/index_en.htm?topic=work&contacts=id-611492

CHAPTER 20

Social Insurance Entitlements

- 1. Introduction**
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 - 12. State Pension (Contributory)**
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 - 14. Working Family Payment**
 - 15. One Parent Family Payment**
 - 16. Back To Work Family Dividend**
 - 17. Treatment Benefit Scheme**
 - 18. Social Welfare Appeals Office**
-

1. Introduction

There are 3 broad types of payments made by the Department of Social Protection (DSP) which can be classified as follows:

- Contributory payments made on the basis of an individual's PRSI contribution record (e.g. Illness Benefit, Jobseeker's Benefit, State Pension Contributory, etc.),
- Non-Contributory payments made on the basis of a means test (e.g. Jobseeker's Allowance, State Pension Non-Contributory), and
- Universal Payments (e.g. Child Benefit), which are not dependent on PRSI contributions or means tested.

2. Qualifying Conditions

To claim a contributory payment, certain conditions must be satisfied, one of which is that the claimant must satisfy the PRSI contribution requirements, which may require the individual to have:

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- A minimum number of weeks paid PRSI contributions since first starting work, **and**
- A minimum number of weeks paid or credited PRSI contributions, in the relevant tax year, **or**
- A minimum number of weeks paid PRSI contributions in the relevant tax year and a minimum number of weeks paid in the year immediately before the relevant tax year.

3. PRSI Contribution Week and the Relevant Tax Year

A contribution week is a successive period of seven days commencing on 1st January each year. If an employee receives a payment for any part of a week which is subject to PRSI, even where no employee PRSI is payable, the employer PRSI contribution is sufficient to have a paid PRSI contribution for that week. A person is credited with a PRSI contribution week for each week in which he is in receipt of a benefit or allowance from the DSP. An employee's entitlement to claim a short-term DSP benefit is generally determined by his PRSI record in the relevant tax year. The relevant tax year is the second last income tax year (i.e. for benefits claimed in 2023 the relevant tax year is 2021).

4. PRSI Contribution Record

An individual's PRSI contributions are recorded by the DSP under his PPSN. It is recommended that an individual review their PRSI record and obtain a copy of it so they can be sure their record is accurate.

Individuals can request a copy of their PRSI record online via MyWelfare <https://www.mywelfare.ie/Account/Login> which requires the individual to set up a basic MyGovID account <https://www.mygovid.ie/>.

Individuals who have a verified MyGovID account can access a copy of their PRSI contribution statement online at www.MyWelfare.ie by clicking on My Statements. They can also opt to have a PDF copy of their contribution record sent to their MyWelfare account.

5. PRSI Class Benefits

All employees are *not* entitled to the same DSP benefits, and this is reflected in the fact that there are different rates of PRSI contributions under the various PRSI classes. The following is a list of the benefits, which each class of contributor is entitled to in respect of their PRSI contributions:

Class A Benefits

- Adoptive Benefit
- Benefit Payment for 65 Year Olds
- Carer's Benefit
- Guardian's Payment (Contributory)
- Health and Safety Benefit
- Illness Benefit
- Invalidity Pension
- Jobseeker's Benefit
- Maternity Benefit
- Occupational Injuries Benefit
- Parent's Benefit
- Partial Capacity Benefit
- Paternity Benefit
- State Pension (Contributory)

- Treatment Benefit
- Widow/Widower's or Surviving Civil Partner's (Contributory) Pension

Class B Benefits

- Carer's Benefit
- Guardian's Payment (Contributory)
- Limited Occupational Injuries Benefit
- Parent's Benefit
- Widow/Widower's or Surviving Civil Partner's (Contributory) Pension

Class C Benefits

- Carer's Benefit
- Guardian's Payment (Contributory)
- Parent's Benefit
- Widow/Widower's or Surviving Civil Partner's (Contributory) Pension

Class D Benefits

- Carer's Benefit
- Guardian's Payment (Contributory)
- Occupational Injuries Benefit
- Parent's Benefit
- Widow/Widower's or Surviving Civil Partner's (Contributory) Pension

Class E Benefits

- Adoptive Benefit
- Carer's Benefit
- Guardian's Payment (Contributory)
- Health and Safety Benefit
- Illness Benefit
- Invalidity Pension
- Maternity Benefit
- Parent's Benefit
- Partial Capacity Benefit
- Paternity Benefit
- State Pension (Contributory)
- Treatment Benefit
- Widow/Widower's or Surviving Civil Partner's (Contributory) Pension

Class H Benefits

- Adoptive Benefit
- Benefit Payment for 65 Year Olds
- Carer's Benefit**
- Guardian's Payment (Contributory)
- Health and Safety Benefit
- Illness Benefit
- Invalidity Pension
- Jobseeker's Benefit
- Maternity Benefit

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- Parent's Benefit
- Partial Capacity Benefit
- Paternity Benefit
- State Pension (Contributory)
- Treatment Benefit**
- Widow/Widower's or Surviving Civil Partner's (Contributory) Pension**

**These benefits are only paid during service.

Class J Benefits

- Occupational Injuries Benefit
-

Class K Benefits

- No benefits are payable under Class K

Class M Benefits

- Occupational Injuries Benefit (where the employee is under 16 years of age)

Class P Benefits

- Benefit Payment for 65 Year Olds
- Limited Illness Benefit
- Limited Jobseeker's Benefit
- Partial Capacity Benefit
- Treatment Benefit

Class S Benefits

- Adoptive Benefit
- Benefit Payment for 65 Year Olds
- Guardian's Payment (Contributory)
- Invalidity Pension
- Jobseekers Benefit Self-Employed
- Maternity Benefit
- Parent's Benefit
- Partial Capacity Benefit
- Paternity Benefit
- State Pension (Contributory)
- Treatment Benefit

Note: Except for Treatment Benefit, individuals in receipt of any of the other Benefits (which are taxable) listed above are entitled to claim the PAYE tax credit. While DSP Benefits may be liable to tax, they are not liable to USC or PRSI.

5.1 Entitlement to Social Welfare Benefits based on EU Social Insurance

If an employee was previously in insurable employment in a country covered by EU Regulations and he has paid at least one full rate PRSI contribution since returning to Ireland, his social insurance record in that other country may be combined with his Irish PRSI contributions. This may result in the employee qualifying for the following Social Welfare benefits or pensions:

- Illness Benefit
- Maternity Benefit
- Adoptive Benefit
- Paternity Benefit
- Parent's Benefit
- Invalidity Pension
- State Pension (Contributory)
- Widow/Widower's or Surviving Civil Partner's (Contributory) Pension
- Guardian's Payment (Contributory)
- Jobseeker's Benefit
- Jobseeker's Benefit (Self-Employed)
- Treatment Benefit Scheme
- Carer's Benefit

The relevant countries are:

Austria	Finland	Latvia	Poland
Belgium	France	Liechtenstein	Portugal
Bulgaria	Germany	Lithuania	Romania
Cyprus	Greece	Luxembourg	Slovakia
Czech Republic	Hungary	Malta	Slovenia
Denmark	Iceland	Netherlands	Spain
Estonia	Italy	Norway	Sweden
Switzerland (not a member of the EU)	United Kingdom & Northern Ireland (not a member of the EU)		

When returning from one of these countries, an individual should bring back a record of his Social Insurance contributions on Forms U1 and E104. These forms are available from the appropriate Social Insurance agency in the relevant country. Both forms should be submitted, by the individual to the PRSI Records section of the DSP with a letter requesting that his PRSI record be updated to include the Social Insurance contributions made in another country well in advance of making a claim for any of the benefits or pensions listed above.

6. Jobseeker's Benefit

To claim Jobseeker's Benefit, an individual must:

- Be aged between 18 and 66 years of age.
- Be unemployed (fully unemployed or unemployed for 4 days out of 7)
- Have sustained a substantial loss of employment of at least one day per week and as a result be unemployed for 4 days out of 7. This provision may apply to employees who have been placed on temporary layoff or short-time by their employer. People who choose to work part-time or job share are not covered under this provision.
- Be capable of work
- Be available for and genuinely seeking work
- Satisfy the PRSI contribution conditions (Classes A, H and P only) i.e. have:
 - At least 104 weeks paid contributions since first starting work, **and**
 - At least 39 reckonable PRSI paid or credited contributions in the relevant tax year - a minimum of 13 weeks must be paid contributions*, **or**

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- At least 26 weeks paid contributions, in both the relevant tax year and the year immediately preceding the relevant tax year.

*If an individual does not have 13 paid contributions in the relevant tax year, the following years can be used to meet this condition:

- (a) The 2 tax years before the relevant tax year, or
- (b) The last complete tax year, or
- (c) The current tax year.

Jobseeker's Benefit can be claimed online via MyWelfare by those who have a MyGovID account. Otherwise, the individual must complete a UP1 Form (or UP6 Form for repeat claims within 6 months of a previous claim), "sign on" at his local Intreo Centre/Social Welfare office, on the first day of unemployment and bring identification. In certain instances (e.g. temporary lay-off) a letter from the employer may suffice. When a person claims Jobseeker's Benefit for the first time, they will be issued with a Public Services Card.

Those in receipt of Jobseeker's Benefit who are over 62 do not have to meet with a case officer in their local Intreo Centre or sign on monthly. Those who are over 65 or turn 65 while in receipt of Jobseeker's Benefit, will continue to receive the payment up to their 66th birthday even where the claim was due to end before that date.

Jobseeker's Benefit is payable from the fourth day of a claim and may be paid for a maximum of 9 months (234 days) where an individual has at least 260 paid contributions, or up to 6 months (156 days) where an individual has between 104 and 259 inclusive paid contributions.

The amount of Jobseeker's Benefit payable to an individual and a qualifying adult (where appropriate) in the current year is graduated based on the amount of the claimant's average weekly reckonable earnings in the relevant tax year. An employee's average weekly reckonable earnings are his reckonable earnings for the year divided by the number of insurable weeks of employment. Where an individual's average weekly reckonable earnings in the relevant tax year are below €300, a reduced personal rate and qualified adult rate of Jobseeker's Benefit is payable, as outlined in the following table:

Claimant's average weekly earnings in relevant tax year	Personal Rate	Qualified Adult Rate	Qualified Child - Half Rate	Qualified Child - Full Rate
Less than €150	€98.70	€94.50	Under 12 years €21	Under 12 years €42
€150 - €219.99	€134.20		Aged 12 or over €25	Aged 12 or over €50
€220 - €299.99	€172.30			
€300 or more	€220.00			

A claimant must satisfy the conditions outlined above to qualify for the Personal rate. If the claimant has a dependent spouse/partner/civil partner or child(ren), additional conditions will have to be satisfied, which mainly relate to the dependent partner's income. The qualifying child rates are not affected by the level of the claimant's average weekly earnings in the relevant tax year, but may be affected by the level of the dependent adult's income.

Jobseeker's Benefit is a taxable source of income. However, the first €13 per week is exempt from income tax and any additional payment in respect of dependent children is also exempt from income tax. The taxation of Jobseeker's Benefit is dealt with by Revenue by reducing the employee's SRCOP and tax credits. Employers do not take Jobseeker's Benefit into account when calculating Income Tax, PRSI and USC, they simply need to ensure that they are using the latest RPN for the employee.

6.1 Jobseeker's Benefit and Night Workers

Where an employee commences employment on one day and works continuously until the next day (i.e. those employees who work after midnight), that person shall be regarded as being employed only on the first day where the hours worked on the first day exceed the hours worked on the second day, or where the hours are equal on each day or longer on the second day, that person will be regarded as being employed on the second day only.

For example, an employee who commences employment at 8pm and works until 2am will be regarded as being employed on the first day and unemployed on the second day. Where an employee commences work at 10pm and finishes at 3am, that person will be regarded as being unemployed on the first day and being employed on the second day.

6.2 Jobseeker's Benefit – Systematic Short-Time Work

Persons in receipt of Jobseeker's Benefit due to short-time working (i.e. the individual's working week is cut short to say 3 days per week) are exempt from income tax in respect of any Jobseeker's Benefit received for days of unemployment. Jobseeker's Benefit is normally payable based on a 7 day week including Sunday, however for people on short-time work, the benefit will be payable based on a 5 day week (i.e. for every day the person is employed 1/5th of the normal rate is deducted). An individual will not receive Jobseeker's Benefit in any week in which he works for more than 4 days out of 7. As Jobseeker's Benefit is not taxable in these circumstances, it has no impact on an employee's tax credits and SRCOP.

Jobseeker's Allowance is not a taxable source of income.

6.3 Jobseeker's Benefit and Redundancy Payments

Employees who are made redundant are entitled to claim Jobseeker's Benefit. However, if the employee is aged under 55 and receives a redundancy payment (which may include Statutory Redundancy, top-up or ex-gratia payments, encashment of pension entitlements and any other money received under an agreement with the employer), in excess of €50,000, he will lose his entitlement to claim Jobseeker's Benefit for a period of up to 9 weeks. Further information is available in the chapter entitled "Termination Payments".

6.4 Jobseeker's Benefit and Self-Employed Individuals

Since November 2019, a self-employed person can make a claim for Jobseeker's Benefit (Self-Employed) (JBSE) where they are no longer engaged in self-employment. The loss of self-employment must be involuntarily and not as a result of a temporary shutdown or seasonal closure arising in the normal course of business.

In addition, the individual must meet the following conditions:

- Be aged between 18 and 66
- No longer be self-employed – individuals can work as an employee for up to 3 days each week and claim JBSE

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- Be capable of work
- Be available for and genuinely seeking full-time work
- Satisfy the PRSI contribution conditions as follows:
 - At least 156 Class S paid contributions since becoming self-employed or at least 104 Class A or H paid contributions since entering insurable employment, and
 - At least 52 Class S contributions paid in the governing contribution year (i.e. the second last complete tax year).

The rate and duration of JBSE is identical to that which applies to employees as outlined in section 6 above. Claimants aged over 65 will continue to receive the payment until their 66th birthday even if their claim was due to end before that date.

7. Illness Benefit & Injury Benefit

Entitlement to Illness Benefit and Injury Benefit and the taxation of these Benefits are covered in detail in the chapter entitled “Taxation of short-term Social Insurance Benefits”.

8. Partial Capacity Benefit

Partial Capacity Benefit is a scheme which allows people who have a reduced capacity to work to return to employment and still receive a payment from the DSP. The scheme is available to people who are in receipt of Illness Benefit (for a minimum of 6 months) or to a person who is in receipt of Invalidity Pension. There is no limit on the number of hours which can be worked by the individual or on the amount of salary which can be paid to that person.

To qualify, a person must apply for approval from the DSP to return to work. The DSP will appoint a medical assessor and the person may be required to attend a medical assessment. The person’s capacity for work will then be assessed as being mild, moderate, severe or profound. A person will qualify for Partial Capacity Benefit if his restriction on capacity for work is classified as moderate, severe or profound.

If the restriction on capacity for work is classified as being mild, the person will not qualify for the benefit. In addition, the person’s ongoing eligibility for Illness Benefit or Invalidity Pension will be reviewed by the department.

The amount that will be paid by the DSP will depend on the medical assessment of the individual and the classification of his restriction on capacity for work. This is outlined in the following table:

Assessment	% of Personal rate of Illness Benefit or Invalidity Pension
Moderate	50%
Severe	75%
Profound	100%

The person may also be entitled to an increase for a qualifying adult or child dependents.

There is no time limit on the payments and they will continue as long as the individual has an entitlement to receive Illness Benefit or Invalidity Pension. The person does not have to send in medical certificates, but he may be required to attend a medical assessment.

9. Invalidity Pension

Invalidity Pension is a weekly taxable payment made to people who cannot work because of a long-term illness or disability and have met the required PRSI contributions. Normally, an individual must be in receipt of Illness Benefit (or a combination of Injury Benefit and Illness Benefit) for at least 12 months before a claim for Invalidity Pension can be made. It may be possible to qualify for Invalidity Pension after a shorter period if the person is unlikely to be able for work for the rest of his life because of an illness or disability.

To qualify for Invalidity Pension, an individual must meet the following PRSI contribution requirements under Classes A, E, H or S:

- A total of 260 paid PRSI contributions, **and**
- 48 paid or credited PRSI contributions in the last complete tax year before a claim.

While Invalidity Pension is taxable, it is taxed by Revenue by reducing the employee's SRCOP and tax credits. The employer should not tax Invalidity Pension through payroll.

10. Maternity, Paternity, Parent's, Adoptive and Health & Safety Benefit

Entitlement to the above benefits is covered in the Chapters entitled "**Maternity Protection Acts 1994 to 2022**", "**Paternity Leave and Benefit Act 2016**", "**Parent's Leave and Benefit Act 2019**" and "**Adoptive Leave Acts 1995 and 2005**" and the taxation of them is included in the chapter entitled "**Taxation of short-term Social Insurance Benefits**".

11. Widow/Widower's or Surviving Civil Partner's (Contributory) Pension

A person will qualify for a Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension if:

- He is a widow, widower or surviving civil partner, **or**
- He is divorced and would have been entitled to a widow's, widower's or surviving civil partner's (contributory) pension had he remained married, **or**
- His civil partnership has been dissolved and he would have been entitled to a widow's, widower's or surviving civil partner's (contributory) pension had he remained in the civil partnership, **and**
- He is not cohabiting with another person as husband and wife, **and**
- The PRSI contribution conditions are satisfied, **or**
- The person's late spouse/civil partner was in receipt of a State Pension (Contributory) with an entitlement to an increase for his spouse/civil partner.

This pension may be based on a person's own, or his late spouse/civil partner's, PRSI contributions, but not a combination of both. Either person must have:

- 260 paid PRSI contributions paid to the date of death of the spouse/civil partner or before the claimant turns pension age (currently aged 66), whichever is earlier, **and**
- Have either an average of 39 paid or credited PRSI contributions in either the 3 or 5 years before the death of the spouse/civil partner or before the claimant reaches pension age, **or**
- A yearly average of at least 24 paid or credited PRSI contributions from the year of first entry into social insurance until either the year of death of the spouse/civil partner or the year he reached pension age, whichever is earlier.

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The Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension is not paid in addition to State Pension (Contributory). The pension is normally paid weekly at the local Post Office by Social Services Card or by direct payment into a current, deposit or savings account in a financial institution. An application Form WCP1 <https://www.gov.ie/en/service/apply-for-widowers-contributory-pension/#apply> (also available from the local DSP office) should be completed and submitted within 6 months of the spouse/civil partner's death. Late claims will not be backdated beyond 6 months unless the late claim was due to the individual's incapacity or as a result of incorrect information being supplied by the DSP.

12. State Pension (Contributory)

This pension is paid to people from the age of 66 who satisfy the social insurance contribution conditions, which are:

- PRSI contributions started to be paid before reaching 56 years of age,
- 520* full rate PRSI contributions have been paid, **and**
- A yearly average of at least of at least 10 weeks paid or credited contributions from the year the individual first entered the social insurance system to the end of the tax year before the individual reaches pension age. An average of 10 entitles the individual to a minimum pension and they need an average of 48 to get the maximum pension (average rule), or
- For those who reached pension age since 1st September 2012, their entitlement can be assessed using the Total Contribution Approach (TCA) if this is more favourable than the yearly average approach. Using the TCA, an individual qualifies for the maximum personal rate if they have 2,080 (40 years) or more PRSI contributions. If the individual has fewer than 2,080 contributions, they may still qualify for a high rate of pension because up to 1,040 Home Caring Periods (20 years) and up to 520 credited contributions (10 years) can be used as part of your pension calculation. However, the combined Home Caring Periods and credited contributions cannot total more than 1,040 (20 years).

* A maximum of 260 voluntary full rate contributions can be taken into account when calculating the 520 full rate contributions. PRSI contributions paid in Classes A, E, F, G, H, N, and S count as full rate contributions even though Classes F, G and N no longer exist.

A person claiming the State Pension (Contributory) can continue to work on a full-time or part-time basis as contributory payments are not affected by other income of the individual. This pension is normally paid weekly at the local Post Office by Social Services Card or by direct payment into a current, deposit or savings account in a financial institution.

Application for this pension should be submitted 3 months before reaching 66 years of age using the claim Form SPC1 <https://www.gov.ie/en/service/e6f908-state-pension-contributory/#apply> which is also available from the local Social Welfare Office or Post Office. Late claims will be backdated for a maximum of 6 months unless the late claim was due to the individual's incapacity or as a result of incorrect information being supplied by the DSP.

13. Non-Contributory Payments

To qualify for non-contributory payments, a means test must be carried by a DSP Inspector. The DSP Inspector will require details of an individual's and his spouses/civil partner/co-habitant's income, property (except principal private residence), assets, savings, investments, bank accounts, etc. A decision of a person's means is made by a separate Deciding Officer. The weekly

rate of payment depends on the level of means assessed. A means test must be completed for each of the following payments:

- State Pension (Non-Contributory)
- Carer's Allowance,
- One Parent Family Payment
- Widow's Widower's or Surviving Civil Partner's (Non-Contributory) Pension
- Guardian's Payment (Non-Contributory)
- Jobseeker's Allowance
- Blind Pension
- Disability Allowance
- Supplementary Welfare Allowance
- Farm Assist
- Rent Allowance

Social Welfare Assistance payments, which apply to people who do not qualify for Social Welfare benefits, are not based on PRSI contributions, but are subject to a means test.

Child Benefit which is paid to a claimant does not depend on PRSI contributions, nor is it means tested. It is a universal payment to anyone with a qualifying child regardless of means or PRSI contributions. Child Benefit is exempt from income tax, PRSI and USC.

14. Working Family Payment

Working Family Payment (WFP) is a weekly tax-free payment for families, including one-parent families, at work on low pay.

Employees who work 38 hours or more per fortnight (hours of spouses/civil partners can be combined to meet this limit) with at least one qualifying child (under 18 or between 18 and 22 if in full-time education) may qualify for the WFP, if their joint weekly net take-home pay (i.e. net of tax, PRSI and USC, contributions to a PRSA and superannuation contributions) falls below certain limits. Since 5th January 2023, the limits range from €591 for a family with one child, to €1,358 for a family with eight children or more.

WFP is calculated at 60% of the difference between the average net weekly take home pay and the income limit for family size. It is paid by direct debit into an account in a financial institution. An application Form WFP1 <https://www.gov.ie/en/service/08bb21-working-family-payment/> should be completed as soon as possible after you start work and submitted to the DSP.

15. One-Parent Family Payment

This is a payment, for both men and women who, for a variety of reasons, are bringing up a child or children without the support of a partner. To qualify you must be under 66 and:

- Be the parent, step-parent, adoptive parent or legal guardian of a qualified child,
- Be the main carer of at least one qualified child and that child must live with you. One Parent Family Payment is not payable if the parents have joint equal custody of a child or children,
- Satisfy a means test,
- Not be living with a spouse, civil partner or cohabiting, and
- Satisfy the Habitual Residence Condition.

A qualified child is a child who is mainly cared for by the claimant and is under 7 years of age.

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If you are separated, divorced or your civil partnership is dissolved you must:

- Have been living apart from your spouse/civil partner for at least 3 months (this does not apply to cohabitants),
- Have made efforts to get maintenance from your spouse or civil partner (if your civil partner is the parent of the child/ren),
- Be inadequately maintained by your spouse or civil partner (if your civil partner is the parent of the child/ren).

If your spouse/civil partner is in prison he/she must have been sentenced to at least 6 months in prison or have spent at least 6 months in custody.

Individuals can work while receiving One-Parent Family Payment, however the One-Parent Family Payment is subject to a means test. The first €165 of gross weekly earnings is disregarded when carrying out a means test. This means a person can be employed and earn up to €165 per week and still receive the full One-Parent Family Payment. If a person earns €165 or more, they may qualify for a reduced payment. Since 12th July 2022, an individual can also earn up to €269.23 a week (€14,000 per year) from renting out a room(s) in their home to someone who is not an employee or an immediate family member which will be disregarded in the means test.

16. Back To Work Family Dividend

A Back to Work Family Dividend (BTWFD) scheme is available to those who have children and are in receipt of Jobseeker's or One-Parent Family payments. The initiative is to assist people in moving from social welfare into employment and applies to those who commence employment, increase their hours of employment, or take up self-employment.

Under the scheme, jobseekers and lone parents with a child, or children, will be entitled to a weekly payment for up to 2 years from the time their Jobseeker's payment or One Parent Family payment ceases. This will be facilitated by allowing individuals retain the full amount of the Qualified Child Increase (€42 for children under 12 and €50 for children who are 12) for up to a maximum of 4 children, that they were in receipt of immediately prior to commencing the scheme for the first year, and half that amount for the second year.

The individual must sign off from his or her social welfare payment, with the exception of Working Family Payment and Child Benefit. Further information on the BTWFD scheme is available at: <https://www.gov.ie/en/service/93cd55-back-to-work-family-dividend/>

17. Treatment Benefit Scheme

The Treatment Benefit Scheme run by the DSP provides dental, optical and aural services and non-surgical hair replacement products to qualifying individuals. The scheme is currently available to those individuals who satisfy qualifying PRSI criteria under PRSI Classes A, E, P, H or S.

Where an individual qualifies for Treatment Benefit at any age between 60 and pension age (currently 66), he or she will remain qualified for the remainder of his or her life. More detail on the qualifying PRSI contribution criteria is available at: <https://www.gov.ie/en/service/1fb655-treatment-benefit-scheme/>

The range of benefits covered under the Treatment Benefit Scheme is as follows:

Dental Benefits

The DSP currently covers the cost of an oral examination once per calendar year. A payment of €42 is also available towards a scale and polish once per calendar year. If clinically necessary, this payment can also be used against periodontal treatment. If the cost of the scale and polish exceeds €42 the individual must pay the balance which is capped at €15. There is no cap on the excess for periodontal fees.

Optical Benefits

The Treatment Benefit Scheme currently entitles a qualifying employee to a free eyesight test, once every second year, excluding sight tests required for VDUs, driving licences, etc. Individuals are also entitled to a payment, once every second year towards the cost of prescription glasses or contact lenses. The payment covers the entire cost of basic frames. If an individual chooses more expensive frames, then a contribution of €42 is made with the individual paying the balance.

With regard to contact lenses, if they are required on medical grounds, the DSP will pay up to maximum of €500 towards the cost of each medical lens once every 2 years, provided the individual has a doctor's recommendation. This applies to a small number of eye conditions that make wearing glasses impossible. Disposable lenses are not covered under the scheme. Contact lenses are not available on purely optical or cosmetic grounds.

Hearing Aids

The DSP pays full the cost of a hearing aid up to a maximum of €500 for each hearing aid (€1,000 for a pair) once every 4 years. It also pays for the cost of repairs up to a maximum of €100 per hearing aid, once every 4 years.

Hair Replacement Product

The DSP covers up to a maximum of €500 towards the cost of a non-surgical scalp hair replacement product where hair loss results from a disease or treatment of a disease such as cancer or alopecia.

18. Social Welfare Appeals Office

Where a Social Welfare payment has been terminated or refused, or the claimant is unhappy with the decision, he has a right to appeal and have the matter referred to the Appeals Officer of the Social Welfare Appeals Office for a determination. The Appeals office is independent of the DSP.

An appeal must be lodged in writing, or by completing a Form SWAO1 https://www.socialwelfareappeals.ie/your_appeal/how_to_make_appeal/ (also available from any local Intreo office), within 21 days of receiving a decision. The Chief Appeals Officer will arrange to have the case heard by an Appeals Officer who may revise the decision. The Appeals Officer may decide to hold an oral hearing of the case, which the claimant can attend or may make his decision based on written evidence received.

CHAPTER 21

Taxation of Short-Term Social Insurance Benefits

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-

1. Introduction

Since 1st January 2023, employees with 13 weeks continuous service have a statutory entitlement to 3 days certified sick leave with statutory sick pay, where an employee is unable to work due to illness or injury. This is dealt with in more detail in the Chapter entitled **Sick Leave Act 2022**.

Many employers provide for more favourable sick leave entitlements than statutory sick leave. Under the **Terms of Employment (Information) Acts 1994 to 2014**, an employer is obliged to state what the employee is entitled to (statutory sick leave or otherwise) when absent on sick leave in the employee's statement of terms of employment. The **Sick Leave Act 2022** provides that where an employer provides a sick pay scheme, which, as a whole, is more favourable to than statutory sick leave, the **Sick Leave Act 2022** does not apply to that employer.

It should be noted that regardless of what is, or is not, stated in the employee's terms of employment, certain sectors of employment are covered by a collective agreement which provide for enforceable rates of sick pay and terms and conditions of employment, which can include the payment of sick pay.

Security Industry

In the security industry, after the first 3 days of sick leave, employees are entitled to sick pay of €120 per rostered week from their employer (pro-rata for part-time employees), in addition to any Illness or Occupational Injury Benefit the employee may be entitled to claim from the Department of Social Protection (DSP), as follows:

- After 18 months' service – 3 weeks' sick pay
- After 30 months' service – 4 weeks' sick pay
- After 42 months' service – 5 weeks' sick pay

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Sick pay is only payable where the employee supplies a medical certificate and does not apply to absences arising from traffic accidents (excluding those incurred during the course of employment), substance abuse, sports injuries or injuries sustained while working for another employer.

Contract Cleaning Industry

In the contract cleaning industry, a contributory sick pay scheme applies. Employees may opt into the scheme at any stage following commencement of employment. Thereafter, they may opt in or out of the scheme on 1st January each year. Employees are required to contribute 0.5% of their basic rate of pay. No sick pay is payable for the first 5 working days of illness. Thereafter, employees are entitled to sick pay of 20% of their basic weekly rate of pay for up to 6 weeks of certified sick leave in any one rolling year, subject to the combined amount of sick pay and Illness Benefit not exceeding the employee's weekly pay.

Construction Industry

The Sectoral Employment Order (SEO) governing the construction sector provides for a contributory sick pay scheme in the construction sector. The weekly contributions to the scheme must comprise an employee contribution of €0.63 per week and an employer contribution of €1.27 per week, giving a total contribution of €1.90 per week. The sick pay scheme operated by the Construction Workers Pension Scheme (CWPS) satisfies these requirements. To qualify for sick pay under the CWPS sick pay scheme, the individual must have paid at least 13 contributions into the scheme in the 6 months immediately prior to the first day of the illness. The CWPS scheme provides for a tax free sick pay benefit of €44 per day from the 4th day of illness for 5 days each week up to a maximum benefit of 50 working days in a calendar year. This sick pay is paid directly by the CWPS to the individual and is in addition to any Illness or Occupational Injury Benefit the individual is entitled to claim from the DSP.

2. Illness Benefit¹

Illness Benefit is payable by the DSP when a person is unable to work due to accident or illness, subject to that person having made the appropriate PRSI contributions. Regardless of whether or not an employee receives payment from his employer, he is still entitled to claim Illness Benefit where he meets the qualifying PRSI contributions.

Illness Benefit is payable based on a 6 day week, from Monday to Saturday inclusive, assuming the individual is incapable of work, and Illness Benefit is paid for a day on which an employee is unemployed (e.g. a part-time employee working a 3 day week who is absent due to illness will receive Illness Benefit for a 6 day week, assuming he is sick for the 6 days).

The DSP do not pay Illness Benefit to an individual for the first 3 days of any period of incapacity for work. The 3 days for which no benefit is paid are known as "waiting days". No waiting days apply where the individual was entitled to Jobseeker's Benefit or Allowance for any day in the 14 day period preceding the period of incapacity for work.

As payment is made based on a 6 day week, this means that a person who commences sick leave on a Monday and returns to work on the following Monday, will receive Illness Benefit for 3 days during that week of sick leave. Sunday is not counted as a waiting day.

¹ Social Welfare Consolidation Act 2005, Chapter 8 as amended

Taxation of Short-Term Social Insurance Benefits

However, where an employee returns to work and is then absent again due to illness and not more than 3 days have elapsed between a previous claim for Illness Benefit (or Jobseeker's Benefit, Jobseeker's Allowance, Occupational Injury Benefit or Invalidity Pension), he will be entitled to receive Illness Benefit from the first day of this new period of incapacity for work i.e. no "waiting days" are applied. The reason for this is that the periods of incapacity for work are so close together that they are treated as being one continuous period of incapacity for work. Where a period of sick leave absence spans two income tax years, there is only one waiting day period for which no Illness Benefit is paid as it is one continuous absence.

An IB1 Form (Application for Illness Benefit and Injury Benefit) and a Certificate of Incapacity for Work (MED 1 Medical Certificate) should be completed and submitted to the DSP to claim Illness Benefit. IB1 Forms and MED 1 Medical Certificates are available from a registered medical practitioner.

The MED 1 Medical Certificate is completed by both the individual and the medical practitioner who is required to confirm the expected duration that the employee will be unfit for work and identify the relevant incapacity from a range of options specified on the certificate. The IB1 Form can be completed by the employee only, except where the employee is claiming Injury Benefit as a result of an accident or incident at work, in which case the details must be confirmed by the employer. For data protection reasons, the employee should ask the employer to complete the relevant section relating to the workplace accident before the employee completes the remainder of the IB1 Form with his personal details, which may include details about his personal affairs which are not relevant to his employer.

An employee should complete and submit the IB1 Form from the first day he is sick or ill. There are two reasons for this. Firstly, the DSP will disregard the waiting days of the claim based on the dates entered on the form, and secondly, the DSP will include all periods of sick leave notified to them for the purposes of allocating credited PRSI contributions, regardless of whether or not the individual is entitled to Illness Benefit. The allocation of credited PRSI contributions may be of particular importance to an employee who does not receive sick pay from his employer.

Example 1

Orla works a 5 day week, Monday to Friday. Assuming she meets the qualifying PRSI criteria, if Orla begins her certified sick leave on a Monday, Illness Benefit commences from the Thursday.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Sick Day 1	Sick Day 2	Sick Day 3	I.B.	I.B.	I.B.	N/A

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
I.B.	I.B.	I.B.	I.B.	I.B.	I.B.	N/A

Example 2

If Orla became ill on Saturday she could start her claim from Saturday and she would start to receive Illness Benefit from the following Wednesday.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
In Work	In Work	In Work	In Work	In Work	Sick Day 1	N/A

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Sick Day 2	Sick Day 3	I.B.	I.B.	I.B.	I.B.	N/A

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Example 3

Following on from the above examples, if Orla returned to work and was then absent on sick leave again, she would not suffer a further waiting day period provided no more than 3 days elapsed between the two claims for Illness Benefit.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Sick Day 1	Sick Day 2	Sick Day 3	I.B.	I.B.	I.B.	N/A

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
I.B.	In Work	In Work	In Work	I.B. resumes	I.B.	N/A

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
I.B.	I.B.	I.B.	I.B.	I.B.	I.B.	N/A

Example 4

Peter works Tuesday to Friday each week. Peter is on certified sick leave from Wednesday. Assuming he qualifies, Illness Benefit would start on the following Saturday.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
	In Work	Sick Day 1	Sick Day 2	Sick Day 3	I.B.	N/A

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
I.B.	I.B.	I.B.	I.B.	I.B.	I.B.	N/A

It is also important to note that the social welfare legislation states that an employee will not receive Illness Benefit for any day that he receives holiday pay from his employer. However, under the **Organisation of Working Time Act 1997**, where an employee is sick while on annual leave and produces a medical certificate, the period covered by the medical certificate is regarded as sick leave, and the employee is entitled to take those annual leave days at a later date (i.e. an employee cannot be on 2 types of leave at one time). Hence, any day an employee is ill while on holidays which is covered by a medical certificate is regarded as sick leave, and any holiday pay already paid to an employee should be replaced by the company's sick pay provisions.

2.1 Qualifying PRSI Conditions

To qualify for Illness Benefit, a person must be under 66 years of age and must satisfy the following PRSI contribution conditions under Class A, E, H or P:

- At least 104 weeks paid contributions since first starting work, **and**
- At least 39 weeks paid or credited contributions in the relevant tax year* (a minimum of 13 weeks must be paid contributions**), **or**
- At least 26 weeks paid contributions, in both the relevant tax year and the year immediately preceding the relevant tax year.

* The relevant tax year is the 2nd last complete year before the current year. If a claim for Illness Benefit is made in 2023, the relevant tax year is 2021.

** If an individual does not have 13 paid contributions in the relevant tax year, the following years can be used to meet this condition:

- (a) The 2 tax years before the relevant tax year
- (b) The last complete tax year
- (c) The current tax year

If an individual has 260 or more qualifying paid PRSI contributions since first starting work, he can claim Illness Benefit for a maximum period of 104 weeks. If an individual has between 104 and 259 qualifying paid PRSI contributions, he is entitled to Illness Benefit for up to 52 weeks. At the end of this period, an additional 13 PRSI contributions must be paid (or a lesser number if it brings the total PRSI contributions paid up to 260) in order to re-qualify for Illness Benefit.

3. Rates of Illness Benefit

The Personal rate and the Qualified Adult rate of Illness Benefit payable to an individual are graduated based on the amount of the employee's average reckonable weekly earnings in the relevant tax year. An employee's average weekly earnings are calculated as his annual reckonable earnings divided by the number of insurable weeks of employment. A claimant's average reckonable weekly earnings in the relevant tax year must exceed €300 to be entitled to the maximum rate of Illness Benefit. Where the average reckonable weekly earnings are below €300, a reduced rate of Illness Benefit is payable as follows:

Claimant's average weekly earnings in relevant tax year	Personal Rate	Qualified Adult Rate	Qualified Child - Half Rate	Qualified Child - Full Rate
Less than €150	€98.70	€94.50	Under 12 years €21	Under 12 years €42
€150 - €219.99	€141.90		Aged 12 or over €25	Aged 12 or over €50
€220 - €299.99	€172.30			
€300 or more	€220.00			

If the claimant has a dependent adult or child(ren) and wishes to claim Illness Benefit for them, additional conditions must be satisfied, which mainly relate to the level of income of the dependent adult. To claim an increase for a Qualified Adult (spouse, civil partner or co-habitant), the claimant must be in receipt of the Personal rate of Illness Benefit and his/her adult dependant must:

- Not have a DSP payment in his/her own right subject to certain exceptions (e.g. Child Benefit), **and**
- Have gross weekly earnings or income (before tax, PRSI and USC deductions) not exceeding €310. If the adult dependant is earning €100 or less, the claimant will get a full increase for a Qualified Adult. If the adult dependant is earning in excess of €100 and up to €310 per week, the claimant will get a reduced rate in respect of the Qualified Adult. If the adult dependant is earning more than €310 per week, the claimant will not get an increase for a Qualified Adult.

To claim an increase for a Qualified Child (i.e. a dependent child):

- The full rate increase for a dependent child will be paid to the claimant if the claimant qualifies for a full increase for a Qualified Adult, or if the claimant is a lone parent and is not in receipt of the One Parent Family Payment, Deserted Wife's Benefit, Deserted Wife's Allowance or Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension.

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- The claimant will only be entitled to a half rate increase for a dependent child where his/her spouse, civil partner or cohabitant has an income in excess of €310 a week or has a DSP payment in their own right. A Qualified Child rate is not payable where the claimant's spouse, civil partner or cohabitant is in receipt of gross income in excess of €400 per week.

If the individual is in receipt of the full rate of Widow, Widower's or Surviving Civil Partner Pension, One Parent Family Payment, Deserted Wife's Benefit or Deserted Wife's Allowance, that person cannot simultaneously receive Illness Benefit. However, if the claimant is getting a reduced rate of one of these payments and subsequently becomes ill, he may qualify for a reduced rate of Illness Benefit which will bring the total payment up to the maximum Personal rate of Illness Benefit that the person is entitled to.

The following table indicates how much Illness Benefit a claimant may be entitled to depending on his personal circumstances. We have assumed the maximum rates are payable in each scenario (i.e. children aged 12 or over).

Status	Personal Rate	Qualified Adult	Qualified Child(ren)	Total
Single	€220.00			€220.00
Spouse or Partner	€220.00	€146.00		€366.00
Lone Parent plus 1 child	€220.00		€50.00	€270.00
Partner plus 1 child	€220.00	€146.00	€50.00	€416.00

An additional maximum of €42 or €50 can be added for each additional qualified child.

4. Taxation of Illness Benefit

The Personal rate and the Qualified Adult rate of Illness Benefit received by an individual are taxable from the first day received. The amount payable in respect of a Qualified Child is exempt from tax. Illness Benefit is not subject to PRSI or USC. The same rules apply to Occupational Injury Benefit and references to Illness Benefit should also be read as a reference to Occupational Injury Benefit.

Revenue deal with the taxation of Illness Benefit through an adjustment being made in the employee's SRCOP and tax credits which will be reflected in the Revenue Payroll Notification (RPN) issued to the employer. Revenue will tax Illness Benefit via the RPN regardless of whether the employee is in receipt of sick pay from his employer or not.

Following an analysis by the DSP which showed that most Illness Benefit claims closed within 4 weeks, Revenue use the following approach for taxing Illness Benefit:

(a) Illness Benefit Claims closing within 4 Weeks

The DSP will notify Revenue of the amount of Illness Benefit being paid and the date of commencement. If the DSP notify Revenue that the claim closed within 4 weeks, a new RPN will be issued by Revenue on a Cumulative Basis. The employee's SRCOP will be reduced by the taxable amount of Illness Benefit received by the employee and his tax credits will be reduced by 20% of the taxable amount received.

Example 5

Lucy was absent on sick leave and Revenue received confirmation from the DSP that Lucy received 3 weeks of taxable Illness Benefit, totalling €660. Revenue will make the following adjustments to Lucy's RPN to tax the Illness Benefit and issue a cumulative RPN.

Solution 5

Original RPN	SRCP	Tax Credits
Original Annual Amounts	€40,000.00	€3,550.00
Equivalent Weekly Amounts	€769.24	€68.27

Revised RPN

Revised RPN	SRCP	Tax Credits
Original Annual Amounts	€40,000.00	€3,550.00
Less Illness Benefit	€660.00	€132.00
Revised Annual Amounts	€39,340.00	€3,418.00
Equivalent Weekly Amounts	€756.54	€65.74

This revised RPN will be issued on the Cumulative Basis. If Lucy subsequently claims Illness Benefit later in the year, another adjustment will be carried out at that point.

Example 6

Lisa was absent on sick leave and received Illness Benefit for 1 week of €262 of which €220 was taxable (i.e. Personal rate plus Qualified Child under 12 full rate). Revenue will reduce Lisa's SRCP by €220 and her tax credits by €44 (€220 @ 20%). As the additional €42 is not taxable, it has no impact on her SRCP or tax credits.

Example 7

John was absent on sick leave and received Illness Benefit for 1 week of €450 of which €366 was taxable (i.e. Personal rate plus Qualified Adult rate and Qualified Child under 12 full rate for 2 children). Revenue will reduce John's SRCP by €366 and his tax credits by €73.20 (€366 @ 20%). As the additional €84 is not taxable, it has no impact on his SRCP or tax credits.

(b) Illness Benefit Claims lasting more than 4 Weeks

If an employee's Illness Benefit claim remains open after 4 weeks, Revenue will annualise the weekly taxable amount of Illness Benefit being received by the employee and the employee's SRCP will be reduced by the annualised amount and his tax credits will be reduced by 20% of the annualised amount. Revenue will not make any changes to the RPN during the first 4 weeks. In this instance, the updated RPN will be issued on a Week 1/Month 1 Basis.

Example 8

Lorcan is absent on long term sick leave and is in receipt of taxable Illness Benefit of €220 per week. As his Illness Benefit claim remained open after 4 weeks, Revenue will make the following adjustments to Lorcan's SRCP and tax credits to tax the Illness Benefit and issue an RPN on a Week 1 Basis.

Solution 8

Original RPN	SRCP	Tax Credits
Original Annual Amounts	€40,000.00	€3,550.00
Equivalent Weekly Amounts	€769.24	€68.27

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Revised RPN	SRCP	Tax Credits
<i>Original Annual Amounts</i>	€40,000.00	€3,550.00
<i>Less annualised amount of Illness Benefit</i>	<u>*€11,440.00</u>	<u>**€2,288.00</u>
<i>Revised Annual Amounts</i>	€28,560.00	€1,262.00
<i>Equivalent Weekly Amounts</i>	€549.24	€24.27

* €220 x 52 weeks = €11,440

** €11,440 @ 20% = €2,288

If Revenue do not receive notification from the DSP that the Illness Benefit claim has closed before the end of the tax year, then the above revised RPN will remain in place until the end of the tax year.

If Revenue receive confirmation from the DSP that the claim has closed before the end of the tax year, the RPN will be amended at that point. The annualised taxable Illness Benefit will be reduced to the actual amount of taxable Illness Benefit received by the employee and the tax credits will be reduced to 20% of that amount. The updated RPN will be issued on a Week 1 Basis. If an employee subsequently claims Illness Benefit later in the tax year a similar process will apply and Revenue will recalculate the SRCP and tax credits accordingly.

Example 9

Following on from Example 8, Revenue received confirmation from the DSP that Lorcan's Illness Benefit came to an end after 20 weeks and he received a total taxable amount of €4,400. Revenue subsequently issued an RPN on the Week 1 Basis as follows:

Solution 9

Revised RPN	SRCP	Tax Credits
<i>Original Annual Amounts</i>	€40,000.00	€3,550.00
<i>Less amount of Illness Benefit</i>	<u>€4,400.00</u>	<u>€880.00</u> @ 20% =
<i>Revised Annual Amounts</i>	€35,600.00	€2,670.00
<i>Equivalent Weekly Amounts</i>	€684.62	€51.35

If the Week 1 Basis remains in place until the end of the tax year, the employee should be able to claim any tax and USC refund which may be due at the end of the tax year by completing an Income Tax Return.

Following an absence on sick leave and the issuing of an RPN on the Week 1 Basis, if an employee wishes to be restored to the Cumulative Basis of tax and USC to take advantage of any refunds which may be due, he should contact National Employee Helpline and Revenue should adjust the employee's SRCP and tax credits and issue a new RPN on the Cumulative Basis where applicable.

This may be of more importance to an employee whose employer does not pay sick pay as the issuing of the RPN on the Week 1 prevents the employee from obtaining the benefit of the unused portion of tax credits and SRCP which were not utilised while he was absent on unpaid sick leave. Whereas the majority of employees in receipt of sick pay get to utilise the amount of tax credits and SRCP available to them in each pay period they are paid.

4.1 Illness Benefit Spanning 2 Tax Years

Where Illness Benefit commences in one tax year and continues into the subsequent tax year, Revenue will tax the Illness Benefit as follows:

Taxation of Short-Term Social Insurance Benefits

Year 1:

Where the Illness Benefit claim lasts for more than 4 weeks, Revenue will issue an RPN on the Week 1 Basis based on the annualised amount of Illness Benefit, as outlined in example 8 above.

Where the Illness Benefit claim was for less than 4 weeks (e.g. where the claim commenced in December), a revised RPN will not issue for year 1 as the claim didn't exceed 4 weeks in duration. The employee would retain his tax credits and SRCOP as per the latest RPN issued by Revenue until the end of the tax year. Revenue will have to liaise directly with the employee following the end of the tax year regarding any tax liability which may arise (e.g. where the employee received sick pay and availed of his annual tax credits and SRCOP through payroll). Where the employee was absent on unpaid sick leave and did not get to avail of his annual tax credits and SRCOP, the unused tax credits may be sufficient to offset against the tax arising on the Illness Benefit.

Year 2:

Revenue will annualise the weekly taxable amount of Illness Benefit being received by the employee and the employee's SRCOP will be reduced by the annualised amount and his tax credits will be reduced by 20% of the annualised amount. The RPN will be issued on a Cumulative Basis. When the claim subsequently closes, a revised RPN will be issued on the Week 1 Basis based on the actual amount of Illness Benefit received in year 2.

Example 10

Zac was on sick leave from November to March. He received Illness Benefit of €220 per week for 7 weeks in year 1 and 10 weeks in year 2. He has a SRCOP of €40,000 and tax credits of €3,550. Illustrate what adjustments Revenue will make to Zac's RPN for year 1 and year 2.

Solution 10

Year 1 – A Revised Week 1 RPN will issue when the Illness Benefit Claim exceeds 4 weeks as follows:

	SRCP	Tax Credits
Original Annual Amounts	€40,000.00	€3,550.00
Less Illness Benefit Adjustment	<u>€11,440.00*</u>	<u>€2,288.00**</u>
Revised Annual Amount	€28,560.00	€1,262.00
Equivalent Weekly Amounts	€549.24	€24.27

* $€220 \times 52 \text{ weeks} = €11,440$

** $€11,440 \times 20\% = €2,288$

The revised SRCOP and tax credits will apply for the remainder of year 1.

Year 2 – A Cumulative RPN will issue as follows:

Cumulative RPN	SRCP	Tax Credits
Original Annual Amounts	€40,000.00	€3,550.00
Less Illness Benefit Adjustment	<u>€11,440.00*</u>	<u>€2,288.00**</u>
Revised Annual Amounts	€28,560.00	€1,262.00
Equivalent Weekly Amounts	€549.24	€24.27

* $€220 \times 52 \text{ weeks} = €11,440$

** $€11,440 \times 20\% = €2,288$

Assuming the Illness Benefit Claim closes after 10 weeks, a revised RPN will issue on the Week 1 Basis as follows:

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Week 1 RPN	SRCP	Tax Credits
Original Annual Amounts	€40,000.00	€3,550.00
Less Illness Benefit Adjustment	€2,200.00*	€440.00**
Revised Annual Amounts	€37,800.00	€3,110.00
Equivalent Weekly Amounts	€726.93	€59.81

* €220 x 10 weeks = €2,200

** €2,200 x 20% = €440

4.2 Joint Assessment

Where a married couple or civil partners are jointly assessed for tax purposes, if the spouse or civil partner claiming Illness Benefit has insufficient SRCP or tax credits to cover the tax liability arising on the Illness Benefit, their spouse or partner's tax credits will be reduced (assuming they are an employee) by the excess to ensure that the appropriate amount of tax has been collected.

Example 11

Donna is absent on long term sick leave and is in receipt of taxable Illness Benefit of €220 per week from the DSP. Donna and her husband (Jake) are jointly assessed for tax purposes. Donna has a SRCP of €31,000 and tax credits of €1,775, while Jake has a SRCP of €49,000 and tax credits of €5,325. Illustrate what adjustments Revenue will make to their Tax Credit Certificates to tax the Illness Benefit.

Solution 11

Donna

Revised Week 1 RPN	SRCP	Tax Credits
Original Annual Amounts	€31,000.00	€1,775.00
Less Annualised Illness Benefit	€11,440.00*	€2,288.00**
Revised Annual Amounts	€19,560.00	€0.00
Equivalent Weekly Amounts	€376.16	€0.00

Jake

Revised Week 1 RPN	SRCP	Tax Credits
Original Annual Amounts	€49,000.00	€5,325.00
Less Illness Benefit Adjustment	€0.00	€513.00***
Revised Annual Amounts	€49,000.00	€4,812.00
Equivalent Weekly Amounts	€942.31	€92.54

* €220 x 52 weeks = €11,440

** €11,440 @ 20% = €2,288

***Tax credits cannot be reduced below zero. Jake's tax credits will be reduced by the excess amount of €513 (€2,288 - €1,775) and a new RPN will be issued for Jake on the Week 1 Basis containing the above adjustment.

If the couple feel they have overpaid tax, it can be reclaimed from Revenue at the end of the tax year on completion of their Income tax return.

5. Sick Leave Records

An employer should keep a record of an employee's sick leave absences for numerous reasons, including:

- Where an employee is absent on certified sick leave this is deemed to be time spent working for the purpose of accruing annual leave,
- An employee is entitled to a public holiday benefit in respect of any public holiday which occurs during the first 26 consecutive weeks' sick leave (52 consecutive weeks where the absence is by reason of an occupational injury),
- To determine an employee's statutory sick leave or occupational sick pay entitlement, as applicable. As outlined in the **Sick Leave Act 2022**, an employer must keep records of statutory sick leave for a period of 4 years,
- Where an employer operates a sick pay scheme which "tops-up" the employee's wages, the employer will also need to be aware of the amount of Illness Benefit which the employee is in receipt of. It should be remembered that the days of absence from employment will not equal the numbers of days Illness Benefit is received by the employee as illustrated in the following example.

Example 12

John Kelly works a 5 day week. He was in poor health and had the following absences due to sickness, March - 2 weeks, May - 3 weeks, July - 2 weeks, September - 1 week, and November - 2 weeks.

Solution 12

Absence		Days absent from Work	Claim Days	Waiting Days	Benefit Days
March	2 weeks	10	12	3	9
May	3 weeks	15	18	3	15
July	2 weeks	10	12	3	9
September	1 week	5	6	3	3
November	2 weeks	10	12	3	9
Totals		50	60	15	45

6. Sick Pay Schemes

6.1 Employers who operate Statutory Sick Pay

An employee with 13 weeks continuous service is entitled to be paid statutory sick pay for 3 days certified sick leave in 2023. Statutory Sick Pay is calculated as 70% of an employee's daily rate of pay subject to a maximum of €110 per day.

Where an employee has exhausted his entitlement to statutory sick pay, the primary obligation on the employer is to import the latest RPN for that employee into his payroll. In many cases the employee will be suspended from the payroll for the remainder of his absence as he is not being paid. Once the employee returns to the payroll, the employer should ensure he is using the latest RPN issued by Revenue.

Where an employee is absent from work due to sickness or similar cause and is not entitled to be paid by his employer on the normal pay day while on such an absence, the employee is entitled to request that the employer refund any tax or USC due under the Cumulative Basis, if a cumulative RPN is held by his employer (e.g. where the employee's Illness Benefit claim does not exceed 4 weeks). If such a request is made by an employee, the employer must process any refund of tax and USC due on the normal pay day. If no request is made, the employer is not compelled to process any refund on the normal pay day, however he may do so at his own discretion.

CHAPTER 21

Where an employee is in receipt of Illness Benefit from the DSP for more than 4 weeks, a revised RPN will be issued on a Week 1/Month 1 Basis by Revenue and if an employee wishes to claim a tax refund through payroll he must first request a cumulative RPN from Revenue following the cessation of the Illness Benefit.

Example 13

Mark is employed and earns a gross salary of €600 a week (€120 per day). His annual SRCOP and tax credits are €40,000 and €3,550 respectively. He is entitled to the standard USC COPs. Mark's cumulative pay to week 10 is €6,000 and he paid tax of €517.30 and USC of €125.15.

Mark was absent on sick leave for 3 weeks. He was paid €252 for 3 days statutory sick pay in week 11. Mark did not request a tax refund while absent on unpaid sick leave. Mark returned to work in week 14 and was paid his normal weekly wages.

Revenue issued a cumulative RPN with a revised annual SRCOP of €39,450 and tax credit of €3,440 which was applied to the payroll in week 15.

Complete the attached Tax Deduction Card for weeks 11 to 17 to calculate Mark's net take home pay.

Solution 13

In week 11, Mark received his statutory sick pay of €252 (€120 x 70% = €84 x 3 days).

In week 12 and 13, Mark was suspended from the payroll and did not receive any pay.

In week 14, Mark was paid his full salary of €600. He remains on his original SRCOP and tax credits as an updated RPN has not been issued yet.

In week 15, the updated RPN was received.

See attached Tax Deduction Card for weeks 11 to 17.

Solution to Example 13

		Original	Revised		
	Annual Tax Credits	€ 3,550	€ 3,440.00		
	Weekly Tax Credits	€ 68.27	€ 66.16		
Mark	Annual SRCOP	€ 40,000	€ 39,450.00	Standard Rate of Tax:	20%
	Weekly SRCOP	€ 769.24	€ 758.66	Higher Rate of Tax:	40%

A	B	D	E	F	G	H	I	J	K	L	N	O	P	Q
Week No:	Taxable pay this period	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative tax due (cannot be less than 0)	Tax deducted or refunded this period	PRSI Contributions	USC	Net Take Home Pay	
											EE PRSI	ER PRSI		
10	600.00	6,000.00	7,692.40	-	1,200.00	-	1,200.00	682.70	517.30	51.73	24.00	66.30	12.52	511.75
11	252.00	6,252.00	8,461.64	-	1,250.40	-	1,250.40	750.97	499.43	(17.87)	-	22.18	(3.16)	273.03
12	-	6,252.00	9,230.88	-	-	-	-	819.24	-	-	-	-	-	-
13	-	6,252.00	10,000.12	-	-	-	-	887.51	-	-	-	-	-	-
14	600.00	6,852.00	10,769.36	-	1,370.40	-	1,370.40	955.78	414.62	(84.81)	24.00	66.30	(16.44)	677.25
15	600.00	7,452.00	11,379.90	-	1,490.40	-	1,490.40	992.40	498.00	83.38	24.00	66.30	12.52	480.10
16	600.00	8,052.00	12,138.56	-	1,610.40	-	1,610.40	1,058.56	551.84	53.84	24.00	66.30	12.52	509.64
17	600.00	8,652.00	12,897.22	-	1,730.40	-	1,730.40	1,124.72	605.68	53.84	24.00	66.30	12.52	509.64
18			13,655.88					1,190.88						
19			14,414.54					1,257.04						
20			15,173.20					1,323.20						

CHAPTER 21

As outlined earlier, where an employee is in receipt of Illness Benefit for more than 4 weeks, Revenue will annualise the weekly taxable amount of Illness Benefit and issue an RPN on the Week 1 Basis.

Example 14

Sharon is employed and earns €600 a week (€120 per day). Her annual SRCOP and tax credits are €40,000 and €3,550 respectively. She is entitled to the standard USC COPs. Sharon's cumulative pay to week 10 is €6,000 and she paid tax of €517.30 and USC of €125.15.

Sharon was absent on sick leave for 10 weeks and returned to the work in week 21. She was paid €252 for 3 days statutory sick pay in week 11 and was not paid for the remainder of her sick leave. Sharon requested her employer to process any tax and USC refunds due to her under the Cumulative Basis on the normal pay day.

Revenue issued an RPN on the Week 1 Basis in week 15 with a SRCOP of €28,560 and tax credit of €1,262.

Revenue issued a further RPN on the Week 1 Basis in Week 22 with a SRCOP of €37,910 and tax credit of €3,132.

Complete the attached Tax Deduction Card for weeks 11 to 23 to calculate Sharon's net take home pay.

Solution 14

In week 11, Sharon received her statutory sick pay of €252 ($\text{€120} \times 70\% = \text{€84} \times 3 \text{ days}$).

In weeks 12 to 14, although Sharon received no pay, she received a refund of tax and USC each week.

In weeks 15 to 20, Sharon cannot receive a refund of tax and USC as Revenue issued an RPN on the Week 1 Basis.

In week 21, Sharon returned to the payroll and was paid €600. She was subject to tax and USC on the Week 1 Basis.

In week 22, a revised RPN was received from Revenue on the Week 1 Basis.

See attached Tax Deduction Card for weeks 11 to 23.

Sharon will remain on the Week 1 Basis for the remainder of the tax year unless she contacts Revenue to request a cumulative RPN. If Sharon remains on the Week 1 Basis at the end of the tax year, she should complete her Income Tax Return to obtain any tax and USC refund which may be due.

Solution to Example 14

		Original	Revised	Revised		
Sharon	Annual Tax Credits	€ 3,550	€ 1,262.00	€ 3,132.00		
	Weekly Tax Credits	€ 68.27	€ 24.27	€ 60.24		
	Annual SRCOP	€ 40,000	€ 28,560	€ 37,910.00	Standard Rate of Tax:	20%
	Weekly SRCOP	€ 769.24	€ 549.24	€ 729.04	Higher Rate of Tax:	40%

A	B	D	E	F	G	H	I	J	K	L	N	O	P	Q
Week No:	Salary Only	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Tax deducted or refunded (cannot be less than 0)	PRSI Contributions	USC	Net Take Home Pay	EE PRSI	ER PRSI
10	600.00	6,000.00	7,692.40	-	1,200.00	-	1,200.00	682.70	517.30	51.73	24.00	66.30	12.52	511.75
11	252.00	6,252.00	8,461.64	-	1,250.40	-	1,250.40	750.97	499.43	(17.87)	-	22.18	(3.16)	273.03
12	-	6,252.00	9,230.88	-	1,250.40	-	1,250.40	819.24	431.16	(68.27)	-	-	(14.47)	82.74
13	-	6,252.00	10,000.12	-	1,250.40	-	1,250.40	887.51	362.89	(68.27)	-	-	(14.49)	82.76
14	-	6,252.00	10,769.36	-	1,250.40	-	1,250.40	955.78	294.62	(68.27)	-	-	(14.48)	82.75
15	-	6,252.00	549.24	-	-	-	-	24.27		-	-	-	-	-
16	-	6,252.00	549.24	-	-	-	-	24.27		-	-	-	-	-
17	-	6,252.00	549.24	-	-	-	-	24.27		-	-	-	-	-
18	-	6,252.00	549.24	-	-	-	-	24.27		-	-	-	-	-
19	-	6,252.00	549.24	-	-	-	-	24.27		-	-	-	-	-
20	-	6,252.00	549.24	-	-	-	-	24.27		-	-	-	-	-
21	600.00	6,852.00	549.24	50.76	109.85	20.30	130.15	24.27		105.88	24.00	66.30	12.52	457.60
22	600.00	7,452.00	729.04	-	120.00	-	120.00	60.24		59.76	24.00	66.30	12.52	503.72
23	600.00	8,052.00	729.04	-	120.00	-	120.00	60.24		59.76	24.00	66.30	12.52	503.72

CHAPTER 21

Example 15

Continuing from Example 14, Sharon heard she may be due a tax and USC refund if she requested a cumulative RPN. Sharon contacted Revenue and a cumulative RPN with a SRCOP of €37,910 and tax credit of €3,132 was received in week 24.

Sharon's cumulative pay, tax and USC to week 23 are €8,052, €520.02. and €116.11** respectively.*

**Cumulative tax of €294.62 up to Week 14 plus €105.88 deducted in week 21 and €59.76 deducted in weeks 22 and 23.*

***Cumulative USC of €78.55 up to Week 14 plus €12.52 deducted in weeks 21, 22 and 23.*

Calculate Sharon's net take home pay for weeks 24 to 28 assuming she was paid €600 each week.

Solution 15

The application of the cumulative RPN in week 24 gives rise to both a tax and USC refund.

In weeks 25 to 28, as Sharon's cumulative gross pay does not exceed her cumulative Rate 2 COP, USC is only payable at 0.5% and 2%.

See attached Tax Deduction Card.

Solution to Example 15

		Original	Revised	
	Annual Tax Credits	€ 3,550	€ 3,132.00	
	Weekly Tax Credits	€ 68.27	€ 60.24	
Sharon	Annual SRCOP	€ 40,000	€ 37,910.00	Standard Rate of Tax: 20%
	Weekly SRCOP	€ 769.24	€ 729.04	Higher Rate of Tax: 40%

A	B	D	E	F	G	H	I	J	K	L	N	O	P	Q	
Week No:	Salary Only	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative tax due (cannot be less than 0)	Tax deducted or refunded this period	PRSI Contributions	EE PRSI	ER PRSI	USC	Net Take Home Pay
23		8,052.00							520.02						
24	600.00	8,652.00	17,496.96	-	1,730.40	-	1,730.40	1,445.76	284.64	(235.38)	24.00	66.30	(26.23)	837.61	
25	600.00	9,252.00	18,226.00	-	1,850.40	-	1,850.40	1,506.00	344.40	59.76	24.00	66.30	8.53	507.71	
26	600.00	9,852.00	18,955.04	-	1,970.40	-	1,970.40	1,566.24	404.16	59.76	24.00	66.30	8.54	507.70	
27	600.00	10,452.00	19,684.08	-	2,090.40	-	2,090.40	1,626.48	463.92	59.76	24.00	66.30	8.53	507.71	
28	600.00	11,052.00	20,413.12	-	2,210.40	-	2,210.40	1,686.72	523.68	59.76	24.00	66.30	8.54	507.70	
29			21,142.16					1,746.96							
30			21,871.20					1,807.20							
31			22,600.24					1,867.44							
32			23,329.28					1,927.68							
33			24,058.32					1,987.92							
34			24,787.36					2,048.16							

CHAPTER 21

6.2 Employers who operate a more favourable occupational sick pay scheme

Many employers offer a more favourable occupational sick pay scheme to an employee. Where an occupational sick pay scheme, as a whole, is more favourable than statutory sick pay, the Sick Leave Act 2022 does not apply to that employer. While different employers have different ways of calculating the amount of sick pay and the duration for which it is paid, two of the most common scenarios are as follows:

- The employee retains the Illness Benefit and the employer pays the employee a top up on his wages (i.e. the difference between his normal gross salary and the Illness Benefit received), or similarly, where the employee mandates the Illness Benefit to his employer's bank account and the employer reimburses the amount of Illness Benefit to the employee as a tax free payment.
- The employee retains the Illness Benefit and the employer pays a portion of the employee's wages or a flat amount in addition to the Illness Benefit received by the employee.

6.2.1 Employers who top up the employee's wages

Under this type of arrangement the employee's sick pay is generally calculated as basic salary less the amount of Illness Benefit received by the employee. Employers should have a policy in place which requires employees to inform the employer of the total amount of Illness Benefit received to enable the employer to accurately calculate the employee's sick pay. Where the employer's policy requires the employee to mandate the Illness Benefit to the employer's bank account, an amount equal to the amount of Illness Benefit can be returned to the employee free of tax.

Example 16

Susan is employed by ABC. ABC operates a sick pay scheme which pays employees their basic salary for 13 weeks less the amount of Illness Benefit received by the employee.

Susan earns a gross salary of €600 a week. She is entitled to the standard USC COPs. Susan's cumulative pay to week 10 is €6,000 and she paid tax of €517.30 and USC of €125.15.

Susan was absent on sick leave for 3 weeks from week 11 and was paid her salary less Illness Benefit which she retained. Susan received the Personal rate of Illness Benefit of €220 for 2 weeks and 3 days, after the 3 waiting days were applied by the DSP. Susan returned to work in week 14 and was paid €600.

Revenue issued a cumulative RPN in week 15 with a revised SRCOP of €39,450 and tax credit of €3,440.

Calculate Susan's net take home pay for weeks 11 to 17.

Solution 16

In week 11, Susan was paid €490 as she received Illness Benefit of €110 for 3 days. Susan received a net payment of €433.10 from her employer and €110 from the DSP, giving an overall total of €543.10.

In week 12 and 13, Susan was paid €380 (salary of €600 less €220 of Illness Benefit). Susan remains on her original SRCOP and tax credits as an updated RPN has not been issued yet. Susan received a net payment of €361.79 from her employer and €220 from the DSP, giving an overall total of €581.79 each week.

Taxation of Short-Term Social Insurance Benefits

Note: If the Illness Benefit had been mandated to ABC's bank account, ABC can reimburse the Illness Benefit to Susan free of tax. In this example, Susan would have received an additional €220 in her net pay in weeks 12 and 13, giving an overall total of €581.79 (€361.79 + €220), instead of receiving the Illness Benefit directly from the DSP.

In week 14, Susan was paid her full salary of €600.

In week 15, the updated cumulative RPN was applied which resulted in an increased tax liability.

See attached Tax Deduction Card for weeks 11 to 17.

Note: In practice, there may be a delay in the recording of the Illness Benefit in which case employees may receive their full pay for the first week or two when absent on sick leave, with the employee's sick pay being adjusted once the employer has confirmation of the amount of Illness Benefit.

CHAPTER 21

Solution to Example 16

		Original	Revised		
Susan	Annual Tax Credits	€ 3,550	€ 3,440.00		
	Weekly Tax Credits	€ 68.27	€ 66.16		
	Annual SRCOP	€ 40,000	€39,450.00	Standard Rate of Tax:	20%
	Weekly SRCOP	€ 769.24	€ 758.66	Higher Rate of Tax:	40%

A	B	D	E	F	G	H	I	J	K	L	N	O	P	Q
Week No:	Salary Only	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative Tax due (cannot be less than 0)	PRSI Contributions	USC	Net Take Home Pay		
										EE PRSI	ER PRSI			
10	600.00	6,000.00	7,692.40	-	1,200.00	-	1,200.00	682.70	517.30	51.73	24.00	66.30	12.52	511.75
11	490.00	6,490.00	8,461.64	-	1,298.00	-	1,298.00	750.97	547.03	29.73	19.60	54.15	7.57	433.10
12	380.00	6,870.00	9,230.88	-	1,374.00	-	1,374.00	819.24	554.76	7.73	7.87	33.44	2.62	361.79
13	380.00	7,250.00	10,000.12	-	1,450.00	-	1,450.00	887.51	562.49	7.73	7.87	33.44	2.62	361.79
14	600.00	7,850.00	10,769.36	-	1,570.00	-	1,570.00	955.78	614.22	51.73	24.00	66.30	12.52	511.75
15	600.00	8,450.00	11,379.90	-	1,690.00	-	1,690.00	992.40	697.60	83.38	24.00	66.30	12.52	480.10
16	600.00	9,050.00	12,138.56	-	1,810.00	-	1,810.00	1,058.56	751.44	53.84	24.00	66.30	12.52	509.64
17	600.00	9,650.00	12,897.22	-	1,930.00	-	1,930.00	1,124.72	805.28	53.84	24.00	66.30	12.52	509.64
18			13,655.88					1,190.88						
19			14,414.54					1,257.04						
20			15,173.20					1,323.20						

Example 17

Tanya is employed by DEF. DEF operates a sick pay scheme which pays employees their basic salary for 13 weeks less the amount of Illness Benefit received by the employee. Employees are required to mandate their Illness Benefit to the employer's bank account.

Tanya earns a gross salary of €600 a week. Her annual SRCOP and tax credits are €40,000 and €3,550 respectively. She is entitled to the standard USC COPs. Tanya's cumulative pay to week 10 is €6,000 and she paid tax of €517.30 and USC of €125.15.

Tanya was absent on sick leave for 7 weeks from week 11 and her salary was reduced by the amount of Illness Benefit. The Illness Benefit, which was mandated to her employer's bank account, was paid to Tanya as a tax free payment. Tanya received the Personal rate of Illness Benefit of €220 for 6 weeks and 3 days, after the waiting days were applied by the DSP. Tanya returned to work in week 18.

Revenue issued an RPN on the Week 1 Basis in week 15 with a revised annual SRCOP of €28,560 and tax credit of €1,262.

Revenue issued a further RPN on the Week 1 Basis in week 18 with a revised annual SRCOP of €38,570 and tax credit of €3,264.

Calculate Tanya's net take home pay for weeks 11 to 19.

Solution 17

In week 11, Tanya was paid €490 (salary of €600 less €110 of Illness Benefit for 3 days). She remains on the cumulative basis of tax. DEF reimbursed the €110 of Illness Benefit to Tanya.

In weeks 12 to 14, Tanya was paid €380 (salary of €600 less €220 of Illness Benefit) and she remained on the cumulative basis of tax. DEF reimbursed the €220 of Illness Benefit to Tanya each week.

In weeks 15 to 17, Tanya was paid €380 and she has moved from the Cumulative Basis of tax to the Week 1 Basis with a reduced SRCOP and tax credit. DEF reimbursed the €220 of Illness Benefit to Tanya each week.

In weeks 18 and 19, Tanya was paid her full salary of €600 as she has returned to work. She remains on the Week 1 Basis but her SRCOP and tax credits have been adjusted by Revenue as her Illness Benefit Claim has closed.

See attached Tax Deduction Card for weeks 11 to 17.

CHAPTER 21

Solution to Example 17

		Original	Revised	Revised		
Tanya	Annual Tax Credits	€ 3,550	€ 1,262.00	€ 3,264.00		
	Weekly Tax Credits	€ 68.27	€ 24.27	€ 62.77		
	Annual SRCOP	€ 40,000	€ 28,560	€ 38,570.00	Standard Rate of Tax:	20%
	Weekly SRCOP	€ 769.24	€ 549.24	€ 741.74	Higher Rate of Tax:	40%

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Week No:	Taxable Pay this period	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative tax due (cannot be less than 0)	Tax deducted or refunded this period	PRSI Contributions	USC	Add Illness Benefit	Net Take Home Pay	
10	600.00	6,000.00	7,692.40	-	1,200.00	-	1,200.00	682.70	517.30	51.73	24.00	66.30	12.52		511.75
11	490.00	6,490.00	8,461.64	-	1,298.00	-	1,298.00	750.97	547.03	29.73	19.60	54.15	7.57	110.00	543.10
12	380.00	6,870.00	9,230.88	-	1,374.00	-	1,374.00	819.24	554.76	7.73	7.87	33.44	2.62	220.00	581.79
13	380.00	7,250.00	10,000.12	-	1,450.00	-	1,450.00	887.51	562.49	7.73	7.87	33.44	2.62	220.00	581.79
14	380.00	7,630.00	10,769.36	-	1,526.00	-	1,526.00	955.78	570.22	7.73	7.87	33.44	2.62	220.00	581.79
15	380.00	8,010.00	549.24	-	76.00	-	76.00	24.27		51.73	7.87	33.44	4.14	220.00	536.27
16	380.00	8,390.00	549.24	-	76.00	-	76.00	24.27		51.73	7.87	33.44	4.14	220.00	536.27
17	380.00	8,770.00	549.24	-	76.00	-	76.00	24.27		51.73	7.87	33.44	4.14	220.00	536.27
18	600.00	9,370.00	741.74	-	120.00	-	120.00	62.77		57.23	24.00	66.30	12.52		506.25
19	600.00	9,970.00	741.74	-	120.00	-	120.00	62.77		57.23	24.00	66.30	12.52		506.25
20			741.74					62.77							
21			741.74					62.77							
22			741.74					62.77							

6.2.2 Employers who pay a flat amount or portion of the employee's wages

Example 18

Adam is employed by GWD. GWD operates a sick pay scheme which pays employees €120 per week, after the first 3 days of sick leave, up to a maximum of 5 weeks. This in addition to any Illness Benefit the employee is entitled to claim from the DSP. As this sick pay scheme appears to be more favourable than statutory sick pay, it is assumed that the Sick Leave Act 2022 does not apply to this employer.

Adam earns a gross salary of €600 a week. His annual SRCOP and tax credit is €40,000 and €3,550 respectively. He is entitled to the standard USC COPs. Adam's cumulative pay to week 10 is €6,000 and he paid tax of €517.30 and USC of €125.15.

Adam was absent on sick leave for 4 weeks. He was not paid for the first 3 days of his absence and was paid €120 per week for the remaining 3 weeks and 2 days (pro-rata for the 2 days). Adam returned to work in week 15 and received his normal weekly salary.

Revenue issued a cumulative RPN in week 15 with a revised annual SRCOP of €39,230 and tax credit of €3,396.

Calculate Adam's net take home pay for weeks 11 to 17.

Solution 18

In week 11, Adam was paid €48 for 2 days ($\text{€120} / 5 \times 2$) as he was not paid for the first 3 days of his sick leave. Due to the operation of the Cumulative Basis, Adam receives a refund of tax and USC.

In weeks 12 to 14, Adam was paid €120 and he remains on the Cumulative Basis with his original SRCOP and tax credits as an updated RPN was not received. Again, due to the operation of the Cumulative Basis, Adam receives a refund of tax each week.

In week 15, Adam was paid his full salary of €600 as he returned to work and GWD applied the updated RPN received from Revenue.

See attached Tax Deduction Card for weeks 11 to 17.

CHAPTER 21

Solution to Example 18

Adam	Original						Revised						Standard Rate of Tax: 20% Higher Rate of Tax: 40%	
	Annual Tax Credits			€ 3,550			€ 3,396.00							
	Weekly Tax Credits			€ 68.27			€ 65.31							
	Annual SRCOP			€ 40,000			€ 39,230.00							
	Weekly SRCOP			€ 769.24			€ 754.43							

A	B	C	D	E	F	G	H	I	J	K	L	N	O	P	Q
Week No:	Salary Only	Less Illness Benefit	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Tax deducted or refunded (cannot be less than 0) this period	PRSI Contributions	USC	Net Take Home Pay		
											EE PRSI	ER PRSI			
10	600.00	-	6,000.00	7,692.40	-	1,200.00	-	1,200.00	682.70	517.30	51.73	24.00	66.30	12.52	511.75
11	48.00	-	6,048.00	8,461.64	-	1,209.60	-	1,209.60	750.97	458.63	(58.67)	-	4.22	(12.34)	119.01
12	120.00	-	6,168.00	9,230.88	-	1,233.60	-	1,233.60	819.24	414.36	(44.27)	-	10.56	(9.07)	173.34
13	120.00	-	6,288.00	10,000.12	-	1,257.60	-	1,257.60	887.51	370.09	(44.27)	-	10.56	(9.09)	173.36
14	120.00	-	6,408.00	10,769.36	-	1,281.60	-	1,281.60	955.78	325.82	(44.27)	-	10.56	(9.08)	173.35
15	600.00	-	7,008.00	11,316.45	-	1,401.60	-	1,401.60	979.65	421.95	96.13	24.00	66.30	12.52	467.35
16	600.00	-	7,608.00	12,070.88	-	1,521.60	-	1,521.60	1,044.96	476.64	54.69	24.00	66.30	12.52	508.79
17	600.00	-	8,208.00	12,825.31	-	1,641.60	-	1,641.60	1,110.27	531.33	54.69	24.00	66.30	12.52	508.79
18				13,579.74					1,175.58						
19				14,334.17					1,240.89						
20				15,088.60					1,306.20						

6.2.3 Illness Benefit received in respect of Family Members

In the examples illustrated above, we assumed that the employee was entitled to claim the €220 Personal rate of Illness Benefit only. Where a claimant has a dependent spouse/partner or child, he may be entitled to claim the appropriate Qualified Adult rate or Qualified Child rate. This can significantly increase the amount of Illness Benefit which the individual is entitled to receive. As mentioned previously, only the Personal rate and the Qualified Adult rate of Illness Benefit are taxable. The amount in respect of a Qualified Child is exempt from tax.

When an employer operates a sick pay scheme, the question has often been asked whether or not the employer is entitled to take into account amounts of Illness Benefit received by the employee on behalf of other family members. Again the answer to this question will depend on the employee's terms and conditions of employment. In practice, most employers will take the full amount of the Illness Benefit received by the employee into account when paying any sick pay.

Example 19

Alex is employed by CSV and earns €650 per week. CSV operates a sick pay scheme which pays employees their basic salary for 13 weeks less the weekly amount of Illness Benefit received by the employee. Employees are required to mandate their Illness Benefit to the employer's bank account. As the employer's occupational sick pay scheme is more favourable, the Sick Leave Act 2022 does not apply to CSV.

Alex's annual SRCOP and tax credit are €44,000 and €5,200 respectively, and she is entitled to the standard USC COPs. Alex's cumulative pay to week 10 is €6,500 and she paid tax of €300 and USC of €147.65.

Alex was absent on sick leave for 7 weeks from week 11 and her salary was reduced by the amount of Illness Benefit. The Illness Benefit, which was mandated to her employer's bank account, was returned to Alex as a tax free payment. Alex received Illness Benefit of €262 for 6 weeks and 3 days, which comprised of the Personal rate of €220 and the Qualified Child under 12 rate of €42. Alex returned to work in week 18.

Revenue issued an RPN on the Week 1 Basis in week 16 with a revised SRCOP of €32,560 and tax credit of €2,912. Revenue issued a further RPN on the Week 1 Basis in week 18 with a revised SRCOP of €42,570 and tax credit of €4,914.

Calculate Alex's net take home pay for weeks 11 to 19.

Solution 19

In week 11, Alex was paid was paid €519 (salary of €650 less 131 of Illness Benefit) and she remains on the Cumulative Basis of tax. CSV reimbursed the Illness Benefit to Alex.

In weeks 12 to 17, Alex was paid €388 (salary of €650 less €262 of Illness Benefit). In week 16 Alex was moved to the Week 1 Basis of tax with a reduced SRCOP and tax credit. CSV reimbursed the Illness Benefit to Alex each week.

In weeks 18 and 19, Alex was paid her full salary of €650 as she has returned to work. She remains on the Week 1 Basis but her SRCOP and tax credits have been adjusted based on the total taxable amount of Illness Benefit received as her claim has closed.

See attached Tax Deduction Card for weeks 11 to 19.

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Solution to Example 19

		Original	Revised	Revised												
Alex	Annual Tax Credits	€ 5,200	€ 2,912.00	€ 4,914.00												
	Weekly Tax Credits	€ 100.00	€ 56.00	€ 94.50												
	Annual SRCOP	€ 44,000	€ 32,560	€ 42,570.00									Standard Rate of Tax:	20%		
	Weekly SRCOP	€ 846.16	€ 626.16	€ 818.66									Higher Rate of Tax:	40%		

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Week No:	Taxable Pay this period	Cumulative Taxable Pay	Cumulative SRCOP	Cumulative taxable at higher rate	Cumulative Tax due at Standard Rate	Cumulative Tax due at Higher Rate	Cumulative Gross tax	Cumulative Tax Credit	Cumulative Tax due deducted or refunded (cannot be less than 0)	PRSI Contributions	USC	Add Illness Benefit	Net Take Home Pay		
10	650.00	6,500.00	8,461.60	-	1,300.00	-	1,300.00	1,000.00	300.00	30.00	26.00	71.83	14.77		579.23
11	519.00	7,019.00	9,307.76	-	1,403.80	-	1,403.80	1,100.00	303.80	3.80	20.76	57.35	8.87	131.00	616.57
12	388.00	7,407.00	10,153.92	-	1,481.40	-	1,481.40	1,200.00	281.40	(22.40)	9.52	34.14	2.98	262.00	659.90
13	388.00	7,795.00	11,000.08	-	1,559.00	-	1,559.00	1,300.00	259.00	(22.40)	9.52	34.14	2.98	262.00	659.90
14	388.00	8,183.00	11,846.24	-	1,636.60	-	1,636.60	1,400.00	236.60	(22.40)	9.52	34.14	2.98	262.00	659.90
15	388.00	8,571.00	12,692.40	-	1,714.20	-	1,714.20	1,500.00	214.20	(22.40)	9.52	34.14	2.98	262.00	659.90
16	388.00		626.16	-	77.60	-	77.60	56.00		21.60	9.52	34.14	4.30	262.00	614.59
17	388.00		626.16	-	77.60	-	77.60	56.00		21.60	9.52	34.14	4.30	262.00	614.59
18	650.00		818.66	-	130.00	-	130.00	94.50		35.50	26.00	71.83	14.77		573.73
19	650.00		818.66	-	130.00	-	130.00	94.50		35.50	26.00	71.83	14.77		573.73
20			818.66					94.50							
21			818.66					94.50							
22			818.66					94.50							

7. Injury Benefit

Injury Benefit is one of the benefits payable under the Occupational Injuries Benefit scheme from the DSP. Every employee, regardless of age, who is in insurable employment under PRSI Classes A, D, J, and M, is insured for Injury Benefit purposes. Injury Benefit is payable on a weekly basis where a person is unfit to work as a result of:

- An accident at work
- An accident while travelling (on an unbroken journey) directly to or from work
- An occupational disease.*

* An occupational disease is a disease that an employee contracts in the course of his employment or due to the work he does, for example, from contact with physical or chemical agents.

To claim Injury Benefit, the claimant must be unfit for work for more than 6 days as a result of the accident or disease (excluding Sundays or paid holiday leave). However, if the individual is not fit for work for more than 6 days, he is entitled to a declaration that an occupational accident occurred. This safeguards the individual's future rights to benefits under the Occupational Injuries Benefit Scheme as not all work accidents and diseases result immediately in illness or disablement.

Injury Benefit is not paid for the first 3 days of the employee's illness or incapacity. Payment can be made for up to 26 weeks starting from the date of the accident or development of the disease. If the claimant is still unable to work after 26 weeks, he may be entitled to Illness Benefit, Disability Allowance, or Supplementary Welfare Allowance. The individual may also be entitled to Disablement Benefit if he suffers a loss of physical or mental faculty as a result of the accident or disease.

After 26 weeks payment of Injury Benefit, the claimant may be entitled to transfer to Illness Benefit if the person is still unable to work. In this scenario, Illness Benefit is taxable immediately.

8. Taxation of Maternity, Adoptive and Health & Safety Benefit¹

The entire amount of Maternity, Adoptive and Health & Safety Benefit (including any amount which may be received in respect of a dependent child) is liable to income tax, but is exempt from PRSI and USC.

Revenue deals with the taxation of these benefits via an adjustment being made to the employee's SRCOP and tax credits which will be reflected in the RPN issued to the employer. Employers should not tax these benefits through payroll.

The DSP notify Revenue of the amount of benefit paid to the employee. Once received by Revenue, they will issue a revised RPN in respect of that employee. The weekly amount of the benefit will be annualised (i.e. multiplied by 52 weeks) and the employee's SRCOP will be reduced by the annualised amount of the benefit and her tax credits will be reduced by 20% of the annualised amount.

Where the RPN is issued mid-year, it will be issued on the Week 1 Basis. This RPN will apply for the duration that the benefit is payable unless the benefit spans 2 tax years (see below).

¹ Taxes Consolidation Act 1997, Section 126, as amended by Finance Act 2013

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Example 20

Linda commenced maternity leave at the beginning of May and received Maternity Benefit of €262 per week for 26 weeks. Her SRCOP is €40,000 and her tax credits are €3,550. Linda is not paid by her employer while absent on maternity leave. Calculate the revised SRCOP and tax credits which will appear on her RPN issued by Revenue to deal with the taxation of Maternity Benefit.

Solution 20

Revenue will make the following adjustments to Linda's SRCOP and tax credits:

Original RPN	SRCP	Tax Credits
<i>Original Annual Amount</i>	€40,000.00	€3,550.00
<i>Equivalent Weekly Amount</i>	€769.24	€68.27
Revised RPN	SRCP	Tax Credits
<i>Original Annual Amount</i>	€40,000.00	€3,550.00
<i>Less Maternity Benefit Adjustment</i>	<u>€13,624.00</u>	<u>€2,724.80</u>
<i>Revised Annual Amount</i>	€26,376.00	€825.20
<i>Equivalent Weekly Amount</i>	€507.24	€15.87

* $€262 \times 52 \text{ weeks} = €13,624.00$

** $€13,624 @ 20\% = €2,724.80$

This revised RPN will remain in place for 26 weeks which is the duration of the Maternity Benefit. Although Linda's tax credits are not fully used up by the taxation of the Maternity Benefit, she cannot receive a refund of tax during the period she is in receipt of Maternity Benefit as the RPN is issued on the Week 1 Basis.

At first glance, it may appear incorrect for Revenue to annualise the DSP benefit as the employee will only receive the benefit for a number of weeks. However, when the taxable benefit ceases to be paid by the DSP, Revenue will issue a further RPN on the Week 1 Basis with the original SRCOP and tax credits which applied prior to the commencement of Maternity, Adoptive or Health & Safety Benefit. The outcome is that the application of the reduced SRCOP and tax credits is restricted to the duration of the benefit.

Example 21

Continuing with example 20 above, Linda's Maternity Benefit finishes in November, after 26 weeks. Revenue issued a new RPN on the Week 1 Basis showing her original SRCOP of €40,000 and tax credits of €3,550. Linda returns to work in week 45 and is paid €600. Calculate her net take home pay for week 45.

Solution 21

<i>Gross Pay</i>		€600.00
<i>SRCP</i>	$€40,000 / 52 \text{ weeks} =$	€769.24
<i>Gross tax</i>	$€600 @ 20\% =$	€120.00
<i>Less tax credit</i>		<u>€68.27</u>
<i>Tax liability</i>		€51.73
<i>USC liability</i>	$€231.00 @ 0.5\% =$	€1.15
	$€209.77 @ 2\% =$	€4.19
	$€159.23 @ 4.5\% =$	<u>€7.16</u>
		€12.50

Taxation of Short-Term Social Insurance Benefits

<i>Employee PRSI</i>	€600 @ 4% =	€24.00
<i>Net take home pay</i>		
<i>Gross Pay</i>		€600.00
<i>Less:</i>		
	<i>Income Tax</i>	€51.73
	<i>USC</i>	€12.50
	<i>PRSI</i>	<u>€24.00</u>
<i>Net take home pay</i>		<u>€88.23</u>
		€511.77

As Revenue automatically issue a further RPN on the Week 1 Basis (containing the original SRCOP and tax credits) following the cessation of the Maternity, Adoptive or Health & Safety Benefit, this results in the employee being unable to avail of any tax or USC refund which may arise, especially where the employee avails of the additional maternity leave and receives no pay from her employer. If the Week 1 Basis remains in place until the end of the tax year, the employee should be able to claim any tax and USC refund which may be due at the end of the tax year by completing an Income Tax Return.

However, where an employee contacts Revenue (National Employee Helpline or MyEnquiries) following the cessation of Maternity, Adoptive or Health and Safety Benefit, as appropriate, Revenue may adjust the employee's SRCOP and tax credits and issue a new RPN on the Cumulative Basis. This should be considered by employees whose Maternity Benefit starts and ceases mid-year, and especially by those who are not paid by their employer for all or part of the maternity or adoptive leave and their tax credits were not fully utilised in the taxation of the Maternity Benefit.

Example 22

Following on from Example 21 above, if Linda requests to be restored to Cumulative Basis following the cessation of her Maternity Benefit, Revenue will issue a new RPN on the Cumulative Basis containing the following information:

<i>Cumulative RPN</i>	<i>SRCP</i>	<i>Tax Credits</i>
<i>Original Annual Amount</i>	€40,000.00	€3,550.00
<i>Less Maternity Benefit Adjustment</i>	<u>€6,812.00</u>	<u>€1,362.40</u>
<i>Revised Annual Amount</i>	€33,188.00	€2,187.60
<i>Equivalent Weekly Amount</i>	€638.24	€42.07

Linda is not paid by her employer during her maternity leave. Assume Linda's cumulative details to week 18 (prior to commencement of maternity leave) are as follows:

Pay: €10,800.00 Tax paid: €931.14 USC paid: €225.27

Linda returns to work in week 45 and is paid €600. Calculate her net take home pay for week 45, assuming Revenue has issued a cumulative RPN with a SRCOP and tax credit as outlined above.

Solution 22

<i>Pay to date</i>	€10,800.00
<i>Pay in week 45</i>	<u>€600.00</u>
<i>Cumulative pay</i>	€11,400.00

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Cumulative SRCOP	€638.24 x 45 weeks =	€28,720.80
<i>Cumulative Gross tax</i>	<i>€11,400 @ 20% =</i>	<i>€2,280.00</i>
<i>Less cumulative tax credit</i>	<i>€42.07 x 45 weeks =</i>	<i><u>€1,893.15</u></i>
<i>Cumulative tax liability</i>		<i>€386.85</i>
<i>Less tax paid to date</i>		<i><u>€931.14</u></i>
<i>Tax refund due</i>		<i>€544.29</i>
<i>Cumulative USC Rate 1 COP</i>	<i>€231 x 45 weeks =</i>	<i>€10,395.00</i>
<i>Cumulative USC Rate 2 COP</i>	<i>€440.77 x 45 weeks =</i>	<i>€19,834.65</i>
<i>USC due at Rate 1</i>	<i>€10,395 @ 0.5% =</i>	<i>€51.97</i>
<i>Balance at Rate 2</i>	<i>€1,005 @ 2% =</i>	<i><u>€20.10</u></i>
<i>Cumulative USC liability</i>		<i>€72.07</i>
<i>Less USC paid to date</i>		<i><u>€225.27</u></i>
<i>USC Refund due</i>		<i>€153.20</i>
<i>Employee PRSI</i>	<i>€600 @ 4% =</i>	<i>€24.00</i>
<i>Net take home pay for week 45</i>		
<i>Gross Pay</i>		<i>€600.00</i>
<i>Add:</i>	<i>Income Tax Refund</i>	<i>€544.29</i>
	<i>USC Refund</i>	<i>€153.20</i>
<i>Less:</i>	<i>PRSI</i>	<i>(€24.00)</i>
<i>Net take home pay</i>		<i>€1,273.49</i>

If Linda does not request to be restored to Cumulative Basis following the end of her maternity leave, she should seek any refunds which may be due following the end of the tax year directly from Revenue by completing an Income Tax Return.

8.1 Maternity, Adoptive or Health & Safety Benefit Spanning 2 Tax Years

Where Maternity Benefit commences in one tax year and continues into the subsequent tax year, Revenue will annualise the amount of the benefit (as illustrated above) and issue an RPN on the Week 1 Basis until the end of the first tax year. In the second tax year, Revenue will issue an RPN on the Cumulative Basis from the beginning of the tax year with the appropriate reduction in the SRCOP and tax credits. This will result in the tax due on the balance of the Maternity Benefit in the second year being spread over the full year.

Example 23

Siobhan commences maternity leave in November and will receive Maternity Benefit of €262 from the DSP for 8 weeks in the current tax year and for 18 weeks in the next tax year. She has a SRCOP of €40,000 and tax credits of €3,550. Illustrate what adjustments Revenue will make to Siobhan's RPN for the current tax year and next tax year.

Solution 23

Current tax year

<i>Revised Week 1 RPN</i>	<i>SRCP</i>	<i>Tax Credits</i>
<i>Original Annual Amount</i>	<i>€40,000.00</i>	<i>€3,550.00</i>
<i>Less Maternity Benefit Adjustment</i>	<i><u>€13,624.00</u></i>	<i><u>€2,724.80</u></i>
<i>Revised Annual Amount</i>	<i>€26,376.00</i>	<i>€825.20</i>
<i>Equivalent Weekly Amount</i>	<i>€507.24</i>	<i>€15.87</i>

Taxation of Short-Term Social Insurance Benefits

The revised SRCOP and tax credits will apply for the remaining 8 weeks in the year.

Subsequent tax year

Cumulative RPN	SRCP	Tax Credits
Original Annual Amount	€40,000.00	€3,550.00
Less balance of Maternity Benefit	<u>€4,716.00*</u>	<u>€943.20**</u>
Revised Annual Amount	€35,284.00	€2,606.80
Equivalent Weekly Amount	€678.54	€50.14

* $€262 \times 18 \text{ weeks} = €4,716$

** $€4,716 \times 20\% = €943.20$

This cumulative RPN will apply until the end of the tax year.

8.2 Joint Assessment

In the examples above, we have assumed the employee was entitled to a SRCOP of €40,000 and tax credits of €3,550. Where a married couple or civil partners are jointly assessed for tax purposes, if the spouse or civil partner claiming the DSP benefit has insufficient SRCOP or tax credits to cover the tax liability arising on the DSP benefit, their spouse or partner's tax credits will be reduced (assuming they are an employee) by the excess to ensure that the appropriate amount of tax has been collected.

Example 24

Trish commences maternity leave in August and will receive Maternity Benefit of €262 from the DSP. Trish and her husband (Tony) are jointly assessed for tax purposes. Trish has a SRCOP of €31,000 and tax credits of €1,775, while Tony has a SRCOP of €49,000 and tax credits of €5,325. Illustrate what adjustments Revenue will make to their RPNs in August.

Solution 24

Trish

Revised Week 1 RPN	SRCP	Tax Credits
Original Annual Amount	€31,000.00	€1,775.00
Less Maternity Benefit Adjustment	<u>€13,624.00</u>	<u>€2,724.80</u>
Revised Annual Amount*	€17,376.00	€0.00
Equivalent Weekly Amount	€334.16	€0.00

Tony

Revised Week 1 RPN	SRCP	Tax Credits
Original Annual Amount	€49,000.00	€5,325.00
Less Maternity Benefit Adjustment*	<u>€0.00</u>	<u>€949.80</u>
Revised Annual Amount	€49,000.00	€4,375.20
Equivalent Weekly Amount	€942.31	€84.14

**Tax credits cannot be reduced below zero. Tony's tax credits will be reduced by the excess amount of €949.80 (€2,724.80 - €1,775) and a new RPN will be issued for Tony on the Week 1 Basis containing the above adjustment.*

If the couple feel they have overpaid tax or USC (e.g. if Trish is not paid by her employer while on maternity leave), they should approach Revenue to seek any tax and USC refund which may be due. If the Maternity Benefit spans 2 tax years, the RPN for the second tax year will be amended as outlined in example 23 above.

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9. Maternity Pay Schemes

9.1 Employers who do not operate a Maternity pay scheme

An employee is not entitled to be paid by his/her employer while on maternity, adoptive or paternity leave, unless such a term is included in his/her contract of employment. For ease of reading, references to maternity leave can also be read as a reference to adoptive leave or paternity leave.

Where an employer, does not operate a maternity pay scheme, the primary obligation on the employer is to use the latest RPN for that employee. In most cases the employee is suspended from the payroll for the duration of her absence as she is not being paid. Generally speaking, no tax or USC refunds will arise during maternity leave as Revenue issue an RPN on the Week 1 Basis. Once the employee returns to the payroll, the employer should ensure he is using the latest RPN issued by Revenue for that employee.

Note: If the employee is not due to be paid on the normal pay day, and the employer holds a cumulative RPN for the employee, the employer is obliged to automatically process any refund of tax and USC due to the employee on the normal pay. Where the absence is for any other reason other than sick leave, the employer is obliged to issue any refund due to the employee. There is no requirement for the employee to request the refund as is the case when an employee is absent on sick leave.

Examples 20 and 21 above outline the adjustment Revenue make to an employee's RPN on commencement and cessation of Maternity Benefit.

9.2 Employers who operate a Maternity pay scheme

Where an employer operates a maternity pay scheme, the analysis which was covered previously in relation to sick pay also applies in a similar manner to maternity pay.

Some employers pay their employees a “top up” (salary less Maternity Benefit) for the duration of maternity leave (26 weeks), excluding the additional maternity leave. Other employers may have an arrangement where the employee is only paid for a limited number of weeks when on maternity leave (e.g. the employee is paid for the first 18 weeks of maternity leave). Some employers pay their employee's a percentage of their salary (e.g. 50%) when they are on maternity leave. This is just to name but a few of the arrangements which may exist.

9.2.1 Employers who operate a “top up payment”

Example 25

Amanda is employed and earns €600 per week. Prior to commencing maternity leave, her annual SRCOP and tax credits were €40,000 and €3,550 respectively. She is entitled to the standard USC COPs. Amanda's cumulative pay, tax and USC to week 22 are €13,200, €1,138.06 and €275.33 respectively.

Amanda commenced maternity leave at the beginning of week 23. The company's maternity pay policy is to reduce the employee's gross pay by the amount of the Maternity Benefit (assume €262), which is retained by the employee, for the 26 weeks of maternity leave.

Revenue issued an updated RPN on the Week 1 Basis for Amanda in week 23 with a SRCOP of €26,376 and tax credit of €825.20.

Taxation of Short-Term Social Insurance Benefits

Prior to commencing maternity leave, Amanda's gross pay of €600 generally resulted in a net take home pay of €511.75. Calculate Amanda's net take home pay for week 23.

Solution 25

Gross Pay	€600 - €262 =	€338.00
SRCP	€26,376 / 52 weeks =	€507.24
Gross tax	€338 @ 20% =	€67.60
Less tax credit		€15.87
Tax liability		€51.73
USC liability:	€231 @ 0.5% =	€1.15
	€107 @ 2% =	<u>€2.14</u>
		€3.29
Employee PRSI	€338 < €352 =	€0.00
Net take home pay		
Gross Pay		€338.00
Less:		
	Income Tax	€51.73
	USC	€3.29
	PRSI	<u>€0.00</u>
Net take home pay		€55.02
		€282.98

9.2.2 Employers who operate a “flat rate” payment

Example 26

Beth is employed and earns €600 per week. Prior to commencing maternity leave, her annual SRCP and tax credits were €40,000 and €3,550 respectively. She is entitled to the standard USC COPs. Beth's cumulative pay, tax and USC to week 22 are €13,200, €1,138.06 and €275.33 respectively.

Beth commenced maternity leave at the beginning of week 23. Her employer's maternity pay policy is to pay employees 50% of their gross salary subject to the combined maternity pay and Maternity Benefit not exceeding the employee's original gross salary. The employee retains her Maternity Benefit (assume €262).

Revenue issued an updated RPN on the Week 1 Basis for Beth in week 23 with a SRCP of €26,376 and tax credit of €825.20.

Solution 26

Gross Pay		€300.00
SRCP	€26,376 / 52 weeks =	€507.24
Gross tax	€300 @ 20% =	€60.00
Less tax credit		€15.87
Tax liability		€44.13
USC liability:	€231 @ 0.5% =	€1.15
	€69 @ 2% =	<u>€1.38</u>
		€2.53

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<i>Employee PRSI</i>	$\text{€}300 < \text{€}352 =$	$\text{€}0.00$
<i>Net take home pay</i>		
<i>Gross Pay</i>		$\text{€}300.00$
<i>Less:</i>		
	<i>Income Tax</i>	$\text{€}44.13$
	<i>USC</i>	$\text{€}2.53$
	<i>PRSI</i>	<u>$\text{€}0.00$</u>
		<u>$\text{€}46.66$</u>
<i>Net take home pay</i>		$\text{€}253.34$

10. Taxation of Paternity Benefit and Parent's Benefit

The entire amount of Paternity Benefit and Parent's Benefit is liable to income tax but is exempt from PRSI and USC.

Revenue deals with the taxation of these Benefits via an adjustment being made to the employee's SRCOP and tax credits which will be reflected in the RPN issued to the employer, based on information received from the DSP. Employers should not tax Paternity or Parent's Benefit through payroll.

Revenue will make the adjustment to the RPN after the Benefit has been received by the employee. The employee's SRCOP will be reduced by the amount of Paternity or Parent's Benefit and his tax credits will be reduced by 20% of the amount of Paternity or Parent's Benefit. The RPN will be issued on a Week 1 Basis until the end of the tax year. Revenue will review the employee's tax liability at the end of the year which will be reflected in the employee's Statement of Liability.

Example 27

Steve has a SRCOP of €49,000 and a tax credit of €3,550. He took 2 weeks paternity leave in February and the DSP has notified Revenue that Steve received €524 Paternity Benefit. Illustrate what adjustments Revenue will make to Steve's RPN.

Solution 27

Revised Week 1 RPN	SRCP	Tax Credits
<i>Original Annual Amount</i>	$\text{€}49,000.00$	$\text{€}3,550.00$
<i>Less Paternity Benefit Adjustment</i>	<u>$\text{€}524.00$</u> @ 20% =	<u>$\text{€}104.80$</u>
<i>Revised Annual Amount</i>	$\text{€}48,476.00$	$\text{€}3,445.20$
<i>Equivalent Weekly Amount</i>	$\text{€}932.24$	$\text{€}66.26$

However, if the employee contacts Revenue, it should be possible for Revenue to revert the employee's RPN to the Cumulative Basis, however, this will result in the full amount of tax being collected from the employee's next wage payment. If the employee was not paid by his employer during his paternity leave or parent's leave, the employee's tax credits may be sufficient to offset against any tax due, hence any tax liability would be minimal.

An employee is not entitled to be paid by his employer while absent on paternity leave or parent's leave unless it is provided for in his terms of employment. With regard to those employers who do pay paternity pay or parent's pay, such payments are generally calculated in a similar manner to maternity pay or sick pay as outlined above such as a top up payment or a flat rate payment.

CHAPTER 22

Taxation of Benefits in Kind

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1. Introduction

A Benefit in Kind (BIK) arises when an employee receives a benefit from an employer in a form other than a monetary payment. These BIKs are commonly known as “perks” and they can vary enormously in their type and their value. Many employers provide their employees with benefits, ranging from small benefits such as free tea or coffee, birthday presents or Christmas hampers to the provision of a company car for personal use, even where the employee has no business reason for having a company car. The term “notional pay” is used to describe the value of a BIK.

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BIKs received from an employer, by an employee (including office holders¹) whose total remuneration (inclusive of the notional value of any BIK), is €1,905 or more in a tax year, are taxable.² This income limit of €1,905 does not include income from a previous employment. However, where the employee works for a number of businesses under the one parent company, it is the combined income from these employments which is used to determine if the employee's remuneration exceeds the €1,905 limit. Where the individual receiving such benefits is a director of the company concerned, the benefits are taxable regardless of the level of remuneration.

A taxable benefit will arise where a public body (Civil Service of the State or the Government, An Garda Síochána or the Permanent Defence Forces) incurs an expense in providing a benefit to an employee or office holder of that, or another, public body. The body which employs the individual, or in which the office is exercised, is responsible for the operation of BIK.

The majority of BIKs are liable to Income tax, PRSI (employee and employer PRSI) and USC under the PAYE system. An example of such a benefit is the provision of a company car or van to an employee which is available for his private use.

It should be noted that certain benefits are exempt from Income tax, PRSI and USC, such as the provision of a free or subsidised staff canteen provided it is available to all staff.

Certain benefits are liable to USC and employee PRSI, such as the appropriation of shares to an employee from a Revenue Approved Profit Sharing Scheme, but are not liable to Income tax or Employer PRSI.

These various types of benefits will be discussed in more detail throughout the remainder of this chapter with the exception of share based remuneration which is covered in the chapter entitled **Share Based Remuneration**.

2. Common Benefits in Kind

The most common forms of BIK provided by employers to employees which are assessable to Income tax, PRSI and USC under the PAYE system are:

- 1) The provision of a company car or van for private use,
- 2) The provision of free medical insurance,
- 3) Loans granted at a reduced rate of interest, or free of interest, known as preferential loans, and
- 4) Free or subsidised accommodation.

When an employee receives a benefit from his employer, which has a monetary value, the value is liable to Income tax, PRSI and USC under the PAYE system. For example, if an employee was offered a choice of:

- a) An annual salary of €25,000, or
- b) An annual salary of €22,000, plus the use of a new company car for which all expenses are paid by the employer, including those relating to the private use of the car,

it is quite likely that most employees would choose option (b). What this signifies is that the provision of a company car to an employee has a value, which in the above circumstances is

¹ Taxes Consolidation Act 1997, Section 116, Inserted by Finance Act 2013

² Taxes Consolidation Act 1997, Section 116

worth more than the €3,000 salary difference. The BIK rules calculate a value for the benefit and assess it to Income tax, PRSI and USC. Where an employee receives a BIK from his employer, the employer collects the liabilities due on the notional value of the benefit through the payroll system.

2.1 BIK for Employee Family Members

Any employee in receipt of a BIK is taxable on the value of that BIK. This includes BIKs provided for members of the employee's family or household, which, unless otherwise stated includes a spouse, civil partner, family, children of the civil partner, servants, dependants and guests.³ Therefore, if a company provides a company car for the wife of the managing director, the managing director is liable for Income tax, PRSI and USC under the PAYE system on that benefit as if it had been provided for his own use, even if his wife is not an employee of the company, in addition to any BIK, which arises in respect of any benefit, provided for his own use.

3. Valuation Rules

The valuation rules for calculating the value of a BIK vary according to the nature of the benefit provided. Where an employer pays a bill such as an annual club subscription of say, €1,000, on behalf of an employee, the taxable value of the BIK is the cost incurred by the employer of €1,000.

Where an employer provides goods to an employee, the general rule is that the value of the BIK is the higher of:

- The cost of the goods to the employer, or
- The value realisable by the employee for the benefit i.e. market value of the goods,

less any contribution paid by the employee towards the cost.

Revenue state that where the difference between the cost incurred by the employer and the value realisable by the employee on the sale of the goods is not significant, the cost to the employer will be taken as the value of the BIK. However, for "large goods or assets" such as where a company provides a house, a car or a fitted kitchen to an employee, Revenue will regard the higher of the cost to the employer or the market value of the goods as being the value of the BIK, less any payment or contribution towards the cost (if any) made by the employee. If the employer manufactures the goods, the cost of providing the goods would normally be lower than the market value.

Where an employer transfers the ownership of goods such as a company computer, company car, company van, etc. to an employee after having been used by the employer in his business, the value of the BIK will be the market value of the goods at the time that the goods are transferred to the employee, rather than the cost to the employer, less any amount recovered from the employee.

Example 1

ABC Ltd is upgrading its computer system and they have decided to sell their old computers to their employees for €50 each. The computers originally cost €1,000 each and they are now worth €200 each. What is the value of the BIK for each employee who buys one of these computers?

³ Taxes Consolidation Act 1997, Section 116

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Solution 1

<i>Current market value of computer</i>	€200.00
<i>Less: employee contribution</i>	<u>€50.00</u>
<i>Value of BIK</i>	€150.00

3.1 Provision of Services to Employees

Where, an employer provides services to an employee free of charge, such as a solicitor's office which provides a free conveyance service for an employee, Revenue state that the value of the BIK will be the cost to the employer of providing the service, less any contribution made by the employee towards the costs.

In such a situation the cost to the employer would be the cost of paying the employee who carried out the necessary work, plus any actual costs or fees paid on behalf of the employee receiving the benefit.

4. Benefit in Kind Rules

The majority of BIKs are liable to Income tax, PRSI and USC under the PAYE system which ensures that these liabilities are collected by employers. The effects of these rules are as follows:

- Income tax, PRSI and USC due on the taxable value of the benefit (known as notional pay) must be collected by the employer under the PAYE system.
- The notional pay must be the value of the benefit, or best estimate that can reasonably be made by the employer where the precise value is not available at the time the benefit is being provided to the employee.
- Where the amount of the wages or salary payable to an employee is insufficient to collect the full amounts of Income tax, PRSI and USC due on the notional pay, the employer is required to pay any shortfall, in addition to the amounts collected from the wages, or salary.
- Any shortfall in Income tax and USC (but not PRSI), which is paid by the employer on behalf of the employee but is not subsequently repaid by the employee to the employer by the 28th February of the following tax year, will be regarded as an additional taxable benefit of the employee in the following tax year and subject to Income tax, PRSI and USC. Even if the employee subsequently repays his employer with the amount outstanding there is no future readjustment of his Income tax, PRSI and USC liabilities.
- Where an employer makes a best estimate of the value of a BIK he should review his calculations on an ongoing basis and make any adjustment necessary to his calculations to ensure the accuracy of each Payroll Submission. Revenue state, as a minimum, reviews should be carried out on a quarterly basis.

Where, in relation to the Income tax, PRSI and USC due on a BIK:

- The amount which an employer is liable to pay Revenue exceeds the amount which the employer has actually paid to Revenue, and
- If Revenue are satisfied that the amount paid was based on the best estimate that could reasonably have been made by the employer when the benefit was provided,

the employer will not be liable to pay any shortfall. Instead, Revenue may direct that the shortfall should be recovered from the employee.

If Revenue are not satisfied that the employer's estimate of the value of the benefit was the best estimate that could have been made when the benefit was provided, the employer will be held

liable for any shortfall and it will then be a matter for the employer to recover that shortfall from the employee.

4.1 Best Estimate

In many instances, the employer will be aware of the cost incurred in providing a benefit to an employee. In these circumstances, determining the amount of notional pay chargeable to Income tax, PRSI and USC will be relatively straightforward. It will not be necessary for the employer to estimate amounts involved. For example, where the employer pays medical insurance or club subscriptions on behalf of an employee, the cost will be known.

In other situations, however, the annual value of a benefit will not always be obvious and so Revenue have outlined specific rules for calculating the annual value of the following benefits:

- The private use of a company car
- The private use of a company van
- The provision of free or subsidised accommodation
- The free use of other company assets
- The provision of loans to staff

Where the actual value is not available, the employer should submit a best estimate of the value in the relevant Payroll Submission. When the actual value of the benefit becomes available, the employer should include any adjustment in the next Payroll Submission.

5. Deduction of Tax in respect of Notional Pay

An employer is required to deduct Income tax, PRSI and USC in respect of a notional payment on:

- a) The day the notional payment is made, or
- b) If there is no actual payment of wages made to the employee on that day, the earlier of:
 - (i) The employee's next pay day, or
 - (ii) The 31st December in the year in which the notional payment is made.

In practice, employers add the notional pay to the employee's wages in the pay period in which the benefit is provided (i.e. in accordance with point b (i) above). It is the aggregate of the wages and the notional pay which must be used for the purposes of calculating Income tax, PRSI and USC in a pay period as outlined in the following example.

Example 2

Gerry Kelly is single and earns €600 per week. His weekly tax credits and SRCOP are €68.27 and €769.24 respectively and he is taxed on the Week 1 Basis. He is entitled to the standard weekly USC COPs. This week he received his weekly salary of €600 and his employer paid €300 for his gym membership. The total pay this week for Income tax, PRSI and USC purposes is €900. Calculate his Income tax, PRSI, USC and Net Take Home Pay.

Solution 2

Salary	€600.00
Notional Pay	€300.00
Gross Pay	€900.00
SRCOP	€769.24

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<i>Gross Tax</i>	$\text{€}769.24 @ 20\% = \text{€}153.84$	
	$\text{€}130.76 @ 40\% = \text{€}52.30$	$\text{€}206.14$
<i>Less Tax Credits</i>		$\text{€}68.27$
<i>Income tax Liability</i>		$\text{€}137.87$
 <i>EE PRSI</i>	 $\text{€}900.00 @ 4\% =$	 $\text{€}36.00$
 <i>USC</i>		
<i>Income up to Rate 1 COP</i>	$\text{€}231.00 @ 0.5\% = \text{€}1.15$	
<i>Excess up to Rate 2 COP</i>	$\text{€}209.77 @ 2\% = \text{€}4.19$	
<i>Balance of pay at Rate 3</i>	$\text{€}459.23 @ 4.5\% = \text{€}20.66$	$\text{€}26.00$
 <i>Net Pay Calculation</i>		
<i>Gross Pay</i>		$\text{€}900.00$
<i>Less:</i>		
<i>Income tax</i>	$\text{€}137.87$	
<i>PRSI</i>	$\text{€}36.00$	
<i>USC</i>	$\text{€}26.00$	
<i>BIK Net Adjustment*</i>	<u>$\text{€}300.00$</u>	<u>$\text{€}499.87$</u>
<i>Net Take Home Pay</i>		$\text{€}400.13$

*It is necessary to make a net BIK adjustment as the gross pay is inclusive of the €300 notional value of the gym membership.

The employee's Income tax, PRSI and USC in respect of the €900, must be deducted from the wages or salary for that pay period.

Where a benefit is provided to an employee following the pay date for that pay period, the notional pay can be carried forward and processed in the subsequent pay period subject to deadline of 31st December in that year (e.g. if an employee, who is paid on the 25th of every month, receives a benefit on the 28th April, the notional pay should be recorded in the May payroll, however if an employee received a taxable benefit in December following the processing of the December payroll, the income tax, PRSI and USC due on this benefit must be deducted by 31st December).

Where an employee does not receive a monetary payment during a period of leave but retains a taxable BIK during this absence (e.g. medical insurance provided during a period of unpaid sick leave, parental leave or additional maternity leave, etc.), the notional pay can be processed as follows:

Where the unpaid absence occurs during the tax year, the notional pay can be processed:

- As normal each pay period during the absence. In many cases a refund of tax arising to the employee under the Cumulative Basis will cover any liabilities due; or
- On the employee's next pay day subject to the employee's next pay day occurring before 31st December in that year.

For example, an employee was absent on unpaid maternity leave from June to September and returned to work in October. She is provided with medical insurance which has a notional value of €100 per month. Her employer can process a notional payment of €100 each month as normal or the employer can process the aggregate amount from June to October (€500) in the October payroll.

Where the unpaid absence spans 2 tax years (e.g. additional maternity leave from November to February with the employee returning to work in March), the notional pay:

- Relating to November and December should be reported to Revenue in a Payroll Submission by 31st December at the latest (i.e. it can be processed each month or the aggregate amount for the 2 months can be processed in December). This could give rise to a scenario where the employee has insufficient wages to pay the liabilities arising in December which is dealt with in Section 5.1 below.
- Relating to January and February can be processed each month or the aggregate amount can be included in the March Payroll Submission when the employee returns to work.

The value of any notional pay is regarded as income and can be included when calculating the amount of tax relief available on pension contributions (*see chapter on Pensions and PRSAs*). It is also included as emoluments when calculating the amount of tax relief due on a termination payment under the SCSB calculation (*see chapter on Termination Payments*).

5.1 Insufficient wages or salary in a pay period

Where an employee's Income tax, PRSI and USC liabilities in a pay period are greater than his net pay (i.e. he has insufficient net pay to pay his liabilities), the employer must pay the Collector General any Income tax, PRSI and USC due. It is then a matter for the employer to recover the amount owed from the employee.

Example 3

An employee receives wages of €600 plus a holiday voucher worth €1,500 in Week 1. His weekly tax credits and SRCOP are €68.27 and €769.24 respectively. He is entitled to the standard USC COPs. Calculate the shortfall arising in his net take home pay.

Solution 3

Salary	€600.00
Notional Pay	<u>€1,500.00</u>
Gross Pay	€2,100.00
SRCOP	€769.24
Gross Tax	€769.24 @ 20% =
	<u>€1,330.76 @ 40% =</u>
Less Tax Credits	<u>€153.84</u>
Income tax Liability	<u>€532.30</u>
	€686.14
	<u>€68.27</u>
	€617.87
EE PRSI	€2,100 @ 4% =
	€84.00
USC	
Income up to Rate 1 COP	€231.00 @ 0.5% =
Excess up to Rate 2 COP	<u>€1.15</u>
Excess up to Rate 3 COP	€209.77 @ 2% =
	<u>€4.19</u>
Balance of pay at USC Rate 4	€906.23 @ 4.5% =
	<u>€40.78</u>
Total employee liabilities	€753.00 @ 8% =
	<u>€60.24</u>
	€106.36
	€808.23

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Net Pay Calculation

<i>Gross Pay</i>		<i>€2,100.00</i>
<i>Less:</i>	<i>BIK Net Adjustment</i>	<i>€1,500.00</i>
	<i>Income tax, PRSI & USC due</i>	<i>€808.23</i>
<i>Shortfall</i>		<i>(€2,308.23)</i> <i>(€208.23)</i>

Notional pay is added to gross pay in order to correctly calculate Income tax, PRSI and USC and must be deducted from the net pay to show correct net take home pay figure. After deducting the BIK Net Adjustment of €1,500, and the employee's PRSI and USC liability of €190.36 from the wages, only €409.64 is left to meet the Income tax liability of €617.87. If the employee cannot pay the employer this amount from his own funds, this will leave a shortfall of €208.23 (€409.64 - €617.87).

Nonetheless, the entire employee liability of €808.23, together with the employer's PRSI of €232.05 (€2,100 x 11.05%), must be paid included in the Payroll Submission for that period and paid to Revenue by the employer by the 23rd of the following month or quarter as appropriate.

The employer may arrange with the employee to recover from subsequent wages or salary, any part of the employee's liability paid by the employer to Revenue, which was not already deducted from wages or salary. This upfront payment by the employer of tax, USC and PRSI with the subsequent recoupment from the employee will not be regarded as a preferential loan as the employer is obliged to pay it. However, the employer must recover this underpayment from the employee by 28th February of the following year to avoid a further BIK arising.

If the underpayment of tax and USC has not been recovered from the employee by 28th February, the outstanding amount becomes a further BIK at that point, which the employer must subject to Income tax, PRSI and USC.

If the employee ceases employment without having made good any amount due to the employer, the un-recouped balance should be returned by the employer to Revenue on a Form P11D. However, an employer is only required to complete a P11D if one is received from Revenue for completion.

Example 4

John is single, employed by ABC Ltd and earns €4,000 per month. His employer provided him with a bonus of a holiday voucher in December. When the BIK was processed, it resulted in John having insufficient salary to cover the liabilities due. His employer accounted for the full liabilities due in the December Payroll Submission. The additional Income tax, PRSI and USC due on the BIK is €510 which John has agreed to repay over the course of the next 3 months (January to March) at a rate of €170 per month. Show how this affects John's wages in the months of January to March.

Solution 4

John will repay €170 per month from January to March inclusive. However, since ABC Ltd has not recovered the full amount of €510 on or before 28th February, the outstanding amount of €170 gives rise to a taxable BIK in March. It should be assumed that PRSI was recovered in priority to Income tax and USC.

As John's monthly salary is €4,000, the following are the calculations which will arise:

	<i>Jan</i>	<i>Feb</i>	<i>March</i>
<i>Monthly Salary</i>	4,000	4,000	4,000
<i>Notional Pay</i>	<u>0.00</u>	<u>0.00</u>	<u>170.00</u>
<i>Taxable Pay</i>	4,000	4,000	4,170.00
<i>Usual monthly deductions</i>	(914.71)	(914.71)	(914.71)
<i>BIK Net Adjustment</i>	0.00	0.00	(170.00)
<i>Additional Income tax/PRSI/USC</i>	<u>0.00</u>	<u>0.00</u>	<u>(82.45)</u>
<i>Net Pay</i>	3,085.29	3,085.29	3,002.84
<i>Less repayment</i>	<u>(170.00)</u>	<u>(170.00)</u>	<u>(170.00)</u>
<i>Net Take Home Pay</i>	2,915.29	2,915.29	2,832.84

Although he paid the liabilities of €510 at the agreed repayment schedule outlined from January to March, on 28th February there was still €170 due to his employer. This is regarded as a further BIK which is subjected to Income tax, PRSI and USC. The additional deduction of €82.45 in March represents 40% Income tax, 4% PRSI and 4.5% USC due on the notional pay of €170. Even though this amount is repaid to his employer by deduction from his March payment, there is no subsequent adjustment made to his Income tax, PRSI and USC liability.

6. Company Cars

6.1 Definition of “Car”

A car means any mechanically propelled road vehicle designed, constructed or adapted for the carriage of the driver or the driver and one or more other persons, other than:

- 1) A motor-cycle, the weight of which is less than 410 kilograms, or
- 2) A van (as defined), or
- 3) A vehicle not commonly used as a private vehicle and unsuitable to be so used.

This definition excludes the average motorcycle, vans, trucks, buses, limousines, hearses, emergency response vehicles, etc. but includes many 4 wheel drive vehicles i.e. jeeps and crew cabs.

Subsequent alterations to a car such as the tinting the rear side windows black or removing the back seats do not alter the fact that the vehicle was designed as a car.

6.2 Company Car Available for Private Use

When an employee receives a company car, **which is available for his private use**, a taxable BIK arises. A car made available to an employee is deemed to be available for private use, unless the terms on which it is made available prohibit private use and no private use of the vehicle occurs. Travel to and from work is generally regarded as private use. Once a vehicle is available for private use, a BIK charge will arise, regardless of whether or not there is any private use.

In order to avoid the countless arguments which would arise regarding the value of this benefit, the legislation adopts a standard approach to valuing the benefit of having a company car available for private use.⁴

A company car which is made available to any of the following persons shall be deemed to be available to the employee for private use:

⁴ Taxes Consolidation Act 1997, Section 121

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- A member of the employee's family or household,
- The employee's civil partner,
- A member of the family or household of the employee's civil partner,
- A spouse or civil partner of a child of the employee,
- A spouse or civil partner of a child of the employee's civil partner.

References to the employee's family or household refer to the employee's spouse, children and their spouses, parents, dependants, servants and guests.

The following rules apply where the ownership of the car does not transfer to the employee.

6.3 Original Market Value of a Company Car

The BIK on the private use of a company car is calculated as a percentage of the original market value (OMV) of the car (not the current market value of the car) based on the annual business travel and the CO₂ emissions of the car. The OMV of a car is calculated as the list price for the car at the date of its first registration (in the State or elsewhere) inclusive of VAT and Vehicle Registration Tax (VRT). However, the OMV of a car is not necessarily based on what a company actually pays for a car, even where it is purchased new, but on the price, which the car might reasonably have been expected to fetch:

1. If sold in the State singly
2. In a retail sale
3. In the open market
4. Immediately before the date of its first registration in the State, or elsewhere.

Where it is established that a discount was given, and such discount was normally obtainable in respect of a single retail sale in the open market, the list price (i.e. the OMV) may be reduced accordingly.

In a situation where a large discount was obtained (e.g. fleet purchase), or the discount cannot be determined (e.g. trade-in situation), or the car was purchased second hand, any claim in respect of discounts is restricted to the amount of any discount obtainable in a single retail sale in the open market. Discounts do not usually exceed 10%.

Where the discount received was greater than 10%, employers are advised to obtain written evidence from the seller confirming that the discount received was also obtained in single retail sales to other third parties. If this confirmation cannot be obtained the maximum discount that can be applied for the purpose of determining the OMV is 10%.

Claims for discounts must be considered on a case by case basis and an automatic reduction (of any percentage) cannot be applied. For example, a discount would not normally be obtainable where the model of vehicle is in scarce supply.

This means that even where a company purchases a large number of cars at a special discount price, the basis for the BIK charge is not what the company paid for the cars, but the OMV (the list price less any discount normally available for a single purchase). Where a discount was actually received on the purchase of the car and such a discount would have been available on a single retail sale, the OMV can be reduced accordingly.

If a car is purchased outside of the State, the OMV is calculated on the basis of the OMV for that same model car when purchased new within the State at the date of registration of the car being supplied. If a car is supplied with extras (e.g. sat-nav, parking assist, heated seats, etc.) this must be reflected in the OMV for a similar model supplied with these extras.

In calculating the value of a BIK, it doesn't matter whether the car was purchased new or second-hand by the employer, or whether it is owned outright or leased, as the value of the BIK is always calculated on the OMV of the car.

See paragraph 6.4.1 below for information on the Temporary Reduction in OMV for 2023.

6.3.1 Original Market Value of an Electric Car

An electric car means a vehicle that derives its power exclusively from an electric motor (i.e. it does not apply to hybrid vehicles).

For 2023, the OMV of an electric company car should be reduced by €35,000 for the purpose of calculating the BIK. While the purchaser of an electric vehicle may qualify for a grant from the Sustainable Energy Authority of Ireland (SEAI), as such grants are paid after the registration of the vehicle, the OMV is not reduced by the value of the SEAI grant.

See paragraph 6.4.1 below for information on the Temporary Reduction in OMV for 2023.

For 2024, the OMV will be reduced by €20,000. For 2025, the OMV will be reduced by €10,000. From 2026 onwards, the BIK will be calculated on the OMV of the car with no reduction being applied.

6.4 Annual Business Travel & CO₂ Emissions

For 2023, the taxable BIK (notional value) arising on the private use of a company car should be calculated as a percentage of the OMV of the car based on the annual business travel and CO₂ emissions of the car in accordance with the following table:

Benefit in Kind - Company Car 2023					
Annual Business Travel (kms)	Vehicle Categories - CO ₂ emissions (g per km)				
	A	B	C	D	E
	<= 59g/km	60 - 99g/km	100 - 139g/km	140 - 179g/km	180g/km +
% of Original Market Value *					
Up to 26,000	22.5	26.25	30	33.75	37.5
26,001 - 39,000	18	21	24	27	30
39,001 - 48,000	13.5	15.75	18	20.25	22.5
48,001 or over	9	10.5	12	13.5	15

* OMV of electric car - reduce by €45,000 to calculate BIK
 * OMV of Category A - D cars (excl. electric cars) - reduce by €10,000 to calculate BIK

The CO₂ emissions of a car can be obtained from the Vehicle Licensing Certificate or the Vehicle Registration Certificate (more commonly referred to as the logbook).

Business travel means the total number of kilometres an employee is necessarily obliged to travel in the vehicle in the performance of the duties of his or her employment. Travel to and from an

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employee's normal place of work is generally regarded as private travel rather than business travel. If an employee works part-time in the office and part-time at home, the office is regarded as his normal place of work.

Where an employee begins a business journey (i.e. an employee travels to a temporary place of work and is absent from his normal place of work) directly from home or returns directly to home, the business journey is the shorter of the following journeys:

- a) Distance between the employee's home and the temporary work location; or
- b) Distance between the normal place of work and the temporary work location.

Travelling from home in the State to a temporary work location abroad on a temporary work assignment and returning home on the termination of that temporary assignment is treated as a business journey.

It should be noted that the appropriate percentage as applied to the OMV of the car based on the annual business travel represents the full BIK charge on a company car. There is no additional BIK charge where the employer pays the road tax, insurance, repairs or where the employer pays for the fuel, even where the employee uses the fuel on non-business journeys.

As can be seen from the table above, the rate of BIK decreases by 20% where an employee's annual business travel exceeds 26,000 kms, (e.g. from 22.5% to 18% in Category A, from 30% to 24% in Category C, etc.). There are further reductions in the BIK rate for employees with higher business travel.

When processing BIK on a company car through payroll, the annual BIK charge should be divided over the number of pay periods occurring within that year, or part of the year where applicable. Hence, where an employee is paid on a weekly, fortnightly or monthly basis, the BIK should be processed on a similar frequency, with a review carried out on a quarterly basis.

6.4.1 Temporary Reduction in OMV for 2023

Prior to 2023, BIK on company cars was calculated based on the OMV and the business kms travelled without reference to the CO₂ emissions of the car. Since 1st January 2023, BIK on company cars is also based on the CO₂ emissions of the car. In addition, the annual business travel thresholds increased, and many of the rates of BIK increased. In summary, these changes resulted in a significant increase in taxes for many employees who are provided with a company car, and increased costs for employers.

To mitigate against these tax increases in the current economic climate, on 7th March 2023, the Government announced a temporary measure which allows the OMV on a company car which falls into category A, B, C or D, and company vans, to be reduced by €10,000 before calculating the BIK. The OMV on a company car under Vehicle Category E will not be reduced by €10,000. This temporary reduction of €10,000 in the OMV is in addition to the existing reduction of €35,000 for electric cars and vans, which means that the OMV of electric cars and vans can be reduced by €45,000 in total for 2023.

The highest annual business travel threshold was also reduced by 4,000 kms from 52,000 kms to 48,000kms for 2023. As it stands, this threshold will revert to 52,000 kms from 1st January 2024. These changes are being legislated for in **Finance Bill 2023** and will apply retrospectively from 1st January 2023 until 31st December 2023. As the changes were announced mid-year, employers

can carry out recalculations on a cumulative basis, and there is no requirement to amend earlier Payroll Submissions.

The following examples include the temporary reduction in OMV for 2023.

Example 5

Peter works for ABC Ltd. He is provided with a company car which has an OMV of €47,500 and CO₂ emissions 121g/km. He drives 15,000 kilometres per year on business travel. Calculate the annual notional value of the car.

Solution 5

OMV of Car	(€47,500 - €10,000) =	€37,500
Vehicle Category	C	
Rate of BIK based on business travel (up to 26,000 kms)	30%	
Annual BIK	€37,500 x 30% =	€11,250

Example 6

Sophie works for DEF Ltd. She is provided with a hybrid company car which has an OMV of €55,500 and CO₂ emissions 46g/km. She drives 18,000 kilometres per year on business travel. Calculate the annual notional value of the car.

Solution 6

OMV of Car	(€55,500 - €10,000) =	€45,500
Vehicle Category	A	
Rate of BIK based on business travel (up to 26,000 kms)	22.5%	
Annual BIK	€45,500 x 22.5% =	€10,237.50

Example 7

Sophie works for GHI Ltd. She is provided with an electric company car which has an OMV of €62,000 and has zero CO₂ emissions. She drives 15,000 kilometres per year on business travel. Calculate the annual notional value of the car.

Solution 7

OMV of Car	(€62,000 - €35,000 - €10,000)	€17,000
Vehicle Category	A	
Rate of BIK based on business travel (up to 26,000 kms)	22.5%	
Annual BIK	€17,000 x 22.5% =	€3,825

Example 8

Tina works for GHI Ltd. She is provided with an electric company car which has an OMV of €62,000 and has zero CO₂ emissions. She drives 30,000 kilometres per year on business travel. Calculate the annual and monthly notional value of the car.

Solution 8

OMV of Car	(€62,000 - €35,000 - €10,000)	€17,000
Vehicle Category	A	
Rate of BIK based on business travel (26,001 – 39,000 kms)	18%	
Annual BIK	€17,000 x 18% =	€3,060
Monthly BIK	€3,060 / 12 months =	€255

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Example 9

Pat works for ABC Ltd. He is provided with a company car which has an OMV of €47,500 and CO₂ emissions 155g/km. He drives 45,000 kilometres per year on business travel. Calculate the annual and weekly notional value of the car.

Solution 9

OMV of Car	(€47,500 - €10,000) =	€37,500
Vehicle Category	D	
Rate of BIK based on business travel (39,001 – 48,000 kms)	20.25%	
Annual BIK	€37,500 x 20.25% =	€7,593.75
Weekly BIK	€7,593.75 / 52 weeks =	€146.03

6.5 Employees with Low Business Kms

Where an employee's annual business travel does not exceed 26,000 kms, the taxable BIK arising on the company car should be calculated at the highest rate as outlined in the table above based on the CO₂ emissions of the car. However, the highest rate applicable to that car can be reduced by 20% where the employee meets **all of the following conditions**:

- Travels at least 8,000 kms on business travel per year,
- Spends more than 70% of his working time away from the office,
- Works on average at least 20 hours per week, and
- Maintains a logbook recording the business travel, business transacted, business time travelled, the date of the journey, and the logbook is certified by the employer as being correct.

BIK should initially be calculated in the normal way by the employer (i.e. at 22.5%, 26.25%, 30%, 33.75% or 37.5% of the OMV based on the CO₂ emissions of the car). Strictly speaking, this 20% reduction is only granted by Revenue on receipt of an application from the employee following the end of the tax year. This claim must be supported by the logbook which must be provided to Revenue within 30 days of the application. However, Revenue permits an employer to grant this 20% reduction at source through payroll once the qualifying conditions are met.

This calculation can be further reduced in respect of any contribution paid by the employee to the employer in respect of the running costs of the car.

Example 10

Tom works for ABC Ltd. He is provided with a company car, which has an OMV of €40,000 and CO₂ emissions of 116g/km. He works on average at least 20 hours per week and spends 80% of his working time away from the office. Calculate his BIK, assuming he travels 16,000 business kilometres per year and a logbook is maintained.

Solution 10

As all the qualifying conditions are met, Tom's employer is permitted to calculate BIK based on the 20% reduction as follows:

OMV of Car	(€40,000 - €10,000) =	€30,000
Vehicle Category	C	
Rate of BIK based on business travel (up to 26,000 kms)	30%	
Annual BIK	€30,000 x 30% =	€9,000
Less 20% reduction	€9,000 x 20% =	€1,800
Taxable BIK		€7,200

Alternatively, the notional value of his BIK could be calculated at 24% (30% reduced by 20%) of the OMV i.e. €30,000 @ 24% = €7,200.

This reduction only applies where the employee's annual business travel does not exceed 26,000 kms. If the annual business travel exceeds 26,000 kilometres, the tapered reduction for higher business mileage as outlined above should be applied by the employer.

In relation to the requirement that the employee works on average at least 20 hours per week, the legislation is silent as regards circumstances where an employee may not be employed for the full year, and as the legislation refers to a 'year of assessment' (i.e. a tax year), the average number of weeks worked is calculated on a 52 week basis. For example, where an employee, who normally works 35 hours per week, is absent on maternity leave for 26 weeks of the year and retains her company car, her average working week for this tax year is 17.5 hours per week (35 hours x 26 weeks worked / 52 weeks in the year), not 35 hours per week.

6.6 Employee Contribution towards Company Car

Where an employer requires an employee to contribute towards the provision or the running costs of a company car, the employee is entitled to have the value of the BIK reduced in respect of this contribution. However, in order to have the BIK reduced, **the contribution must be paid directly to the employer**. The most common method of making a direct contribution to the employer is via a net deduction from the employee's wages.

For example, where an employee pays for fuel at a filling station, no deduction is allowed against the notional value. However, if the employer was to pay the full cost of the fuel for both business and private travel (e.g. by use of a company fuel card), and then deduct an amount from the employee's net pay in respect of private travel, the amount of this deduction can be used to reduce the value of the BIK.

Example 11

Pat works for ABC Ltd. He is provided with a company car which has an OMV of €47,500 and CO₂ emissions 155g/km. He drives 45,000 kilometres per year on business travel. He is required to reimburse his employer €100 per month in respect of the fuel used on private journeys. Calculate the annual notional value of the car.

Solution 11

<i>OMV of Car</i>	<i>(€47,500 - €10,000) =</i>	<i>€37,500</i>
<i>Vehicle Category</i>		<i>D</i>
<i>Rate of BIK based on business travel (39,001 – 48,000 kms)</i>		<i>20.25%</i>
<i>Annual BIK</i>	<i>€37,500 x 20.25% =</i>	<i>€7,593.75</i>
<i>Less: Amount reimbursed to employer (€100 x 12 months)</i>		<i><u>€1,200.00</u></i>
<i>Notional value of BIK</i>		<i>€6,393.75</i>

In some cases an employee may want his employer to provide him with a car, which costs more than the employer is willing to spend. The matter may be resolved by the employee contributing towards the purchase price of the car. In that case, the value of the BIK is still calculated on the OMV of the car, but the notional pay is reduced by the amount of the contribution paid directly to the employer. Where the amount of the employee contribution exceeds the notional pay in the current year, the excess portion can be carried forward to reduce the BIK charge in the subsequent year.

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Example 12

Frank's employer was only willing to spend up to €30,000 on a company car, whereas the car Frank wanted cost €35,000 and has CO₂ emissions 116g/km. They agreed that Frank would contribute €5,000 towards the purchase of the car. Frank travels 10,000 business kilometres per year. Calculate the BIK charge for Frank for the current and subsequent tax years.

Solution 12

Current Year

OMV of Car	(€35,000 - €10,000) =	€25,000
Vehicle Category	C	
Rate of BIK based on business travel (up to 26,000 kms)	30%	
Annual BIK	€25,000 x 30% =	€7,500
Less employee contribution		€5,000
BIK for current tax year		€2,500

Subsequent Years

OMV of Car		€35,000
Vehicle Category	C	
Rate of BIK based on business travel (up to 26,000 kms)	30%	
Annual BIK	€35,000 x 30% =	€10,500
Less employee contribution		Nil
BIK for current tax year		€10,500

Example 13

Julia's employer was only willing to spend up to €31,800 on a company car, whereas the car Julia wanted cost €37,000 and has CO₂ emissions 116g/km. They agreed that Julia would contribute €5,200 towards the purchase of the car. Julia is also required to contribute €100 per month to her employer towards the running costs of the car. Julia travels 45,000 business kilometres per year. Calculate the BIK charge for Julia for the current and subsequent tax years.

Solution 13

Year 1

OMV of Car	(€37,000 - €10,000) =	€27,000
Vehicle Category	C	
Rate of BIK based on business travel (39,001 – 48,000 kms)	18%	
Annual BIK	€27,000 x 18% =	€4,860
Less employee contribution towards running costs (€100 x 12)		€1,200
Less employee contribution towards purchase		€3,660*
Taxable BIK		Nil

* Although Julia contributed €5,200 towards the purchase of the car, after the contribution toward the annual running costs was deducted, it only required a contribution of €3,660 to reduce the BIK charge to nil. While she may be required to pay the full contribution of €7,000 to the employer at the time the car was purchased, the excess amount of her contribution of €1,540 (i.e. €5,200 - €3,660) can be carried forward and offset against her BIK charge in subsequent years.

Year 2

OMV of Car		€37,000
Vehicle Category	C	
Rate of BIK based on business travel (39,001 – 52,000 kms)	18%	

<i>Annual BIK</i>	$\text{€}37,000 \times 18\% =$	$\text{€}6,660$
<i>Less employee contribution towards running costs ($\text{€}100 \times 12$)</i>		$\text{€}1,200$
<i>Less balance of employee contribution towards purchase</i>		$\text{€}1,540^*$
<i>Taxable BIK</i>		$\text{€}3,920$

Year 3 (and subsequent years)

<i>OMV of Car</i>	$\text{€}37,000$
<i>Vehicle Category</i>	<i>C</i>
<i>Rate of BIK based on business travel ($39,001 - 52,000$ kms)</i>	<i>18%</i>
<i>Annual BIK</i>	$\text{€}37,000 \times 18\% =$
<i>Less employee contribution towards running costs ($\text{€}100 \times 12$)</i>	$\text{€}1,200$
<i>Taxable BIK</i>	$\text{€}5,460$

6.7 Company car not available for full year

Where a company car is not available to an employee for a full year, the employee's taxable BIK for that year should be reduced to correspond to the period that the car was available for private use. This can happen where:

- a) The employee receives a car after the start of the tax year,
- b) The employee surrenders the car or ceases employment before the end of the tax year,
- c) The employee only has restricted access to the car (e.g. 2 days per week), and for the rest of the time it is not available for private use,
- d) The car provided to the employee changes during the year (e.g. where an employer changes its fleet of cars or where an employee's normal car is temporarily off the road and he is provided with a replacement car, etc.)
- e) The employee is absent from the country on business duties and the following conditions are met:
 - He travels abroad without the car,
 - The car is not available for his family's use during his absence, and
 - The aggregate number of days spent outside the State for the purpose of performing the duties of the employment is at least 30 complete days in the tax year (any holiday period abroad is excluded and a day for this purpose must include an overnight stay).

To determine the % of OMV to be applied in calculating the BIK, the business kilometres can be annualised in accordance with the following formula:

$$(A \times B) / C$$

Where:

A = actual business kilometres travelled in that year
B = Full year (in days)
C = Part of the year (in days) for which the car was available

Example 14

Declan joined ABC Ltd on 1st April and was provided with a company car, which was available for private use. The car has an OMV of €40,000 and CO₂ emissions of 121g/km. Calculate the value of his BIK for the current year assuming he travelled 10,000 kms from 1st April to 31st December (275 days).

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Solution 14

<i>OMV of Car</i>	$(€40,000 - €10,000) =$	$€30,000$
<i>Vehicle Category</i>	<i>C</i>	
<i>Annualised business travel</i>	$(10,000 \times 365) / 275 =$	$13,272$
<i>Rate of BIK based on business travel (up to 26,000 kms)</i>		30%
<i>Annual BIK</i>	$€30,000 \times 30\% =$	$€9,000$
<i>BIK from 1st April to 31st December</i>	$€9,000 \times 275 / 365 =$	$€6,780.82$

Example 15

Paul is supplied with a company car which has an OMV of €40,000 and CO₂ emissions of 88g/km. He leaves his employment on 24th March having travelled 9,947 kilometres on business travel. Calculate Paul's taxable BIK for the period from 1st January to 24th March (83 days).

Solution 15

<i>OMV of Car</i>	$(€40,000 - €10,000) =$	$€30,000$
<i>Vehicle Category</i>	<i>B</i>	
<i>Annualised business travel</i>	$(9,947 \times 365) / 83 =$	$43,742$
<i>Rate of BIK based on business travel (39,001 - 48,000 kms)</i>		15.75%
<i>Annual BIK</i>	$€30,000 \times 15.75\% =$	$€4,725$
<i>BIK from 1st January to 24th March</i>	$€4,725 \times 83 / 365 =$	$€1,074.45$

Example 16

Joe is employed and is provided with a company car which is available for personal use. His employer changed his company car during the year resulting in Joe having use of 2 cars during the year as follows.

The first car had a list price of €36,526 but the employer secured a 5% discount and purchased it for €34,700 as part of a fleet purchase 3 years ago. The seller provided evidence that other customers obtained a 5% discount in respect of a single retail sale. The car has a current market value of €12,000 and CO₂ emissions of 121g/km. Joe travelled 4,000 business kilometres in this car from 1st January to 28th February (59 days).

Joe was provided with a new company car on 1st March, which his employer is leasing at a cost of €8,000 a year for the next 3 years. This car has an original market value of €45,000 and CO₂ emissions of 74g/km. Joe travelled 32,000 business kilometres from 1st March to 31st December (306 days).

Calculate the taxable BIK arising on each car to include the monthly value.

Solution 16

First car

<i>OMV of Car*</i>	$(€34,700 - €10,000) =$	$€24,700$
<i>Vehicle Category</i>	<i>C</i>	
<i>Annualised business travel</i>	$(4,000 \times 365) / 59 =$	$24,745$
<i>Rate of BIK based on business travel (up to 26,000 kms)</i>		30%
<i>Annual BIK</i>	$€24,700 \times 30\% =$	$€7,410$
<i>BIK from 1st January to 28th February</i>	$€7,410 \times 59 / 365 =$	$€1,197.78$
<i>Monthly value</i>	$€1,197.78 / 2 \text{ months} =$	$€598.89$

**The discounted price can be used as it does not exceed 10% and the seller provided evidence that similar discounts were available in respect of a single retail sale.*

Second car

<i>OMV of Car*</i>	$(€45,000 - €10,000) =$	$€35,000$
<i>Vehicle Category</i>	<i>B</i>	
<i>Annualised business travel</i>	$(32,000 \times 365) / 306 =$	$38,169$
<i>Rate of BIK based on business travel (26,001 to 39,000 kms)</i>		21%
<i>Annual BIK</i>	$€35,000 \times 21\% =$	$€7,350$
<i>BIK from 1st March to 31st December</i>	$€7,350 \times 306 / 365 =$	$€6,161.91$
<i>Monthly value</i>	$€6,161.91 / 10 \text{ months} =$	$€616.19$

Summary

<i>Car 1</i>	$€1,197.78$
<i>Car 2</i>	$€6,161.91$
<i>Total BIK</i>	$\underline{\underline{€7,359.69}}$

Joe's employer should review his BIK liability on a quarterly basis to ensure the accuracy of the figures being reported to Revenue in each Payroll Submission.

Example 17

Dave is supplied with an electric company car which has an OMV of €57,995 and zero CO₂ emissions. The car was available to Dave for private use for the full year. Dave was required to travel to Hong Kong on business duties for 15 days in March. It subsequently transpired in October that he had to travel to California on business duties where he spent 25 days. When Dave travelled abroad on his business trips, his company car was parked in the airport and was not available to any family member. Dave also spent his 2 weeks of annual leave in Spain during July. Dave's annual business travel was 10,000 kilometres.

Calculate Dave's annual taxable BIK and comment how this should be processed monthly through payroll.

Solution 17

<i>OMV of Car</i>	$€57,995 - €35,000 - €10,000 =$	$€12,995$
<i>Vehicle Category</i>	<i>A</i>	
<i>Annualised business travel*</i>	$(10,000 \times 365) / 325 =$	$11,230$
<i>Rate of BIK based on business travel (up to 26,000 kms)</i>		22.5%
<i>Annual BIK</i>	$€12,995 \times 22.5\% =$	$€2,923.87$
<i>BIK for days car was available*</i>	$€2,923.87 \times 325 / 365 =$	$€2,603.45$

**As Dave travelled abroad with the car, and the car was not available to any family member for private use, and the aggregate number of days he spent outside the State on business duties exceeds 30, this period can be disregarded when calculating the BIK (i.e. it can be calculated based on the 325 days that the car was available for private use).*

It is suggested that this could be processed through payroll on a monthly basis as follows:

<i>Monthly BIK from Jan – October</i>	$€2,923.87 / 12 \text{ months} =$	$€243.65$
<i>Total for 10 months</i>	$€243.65 \times 10 =$	$€2,436.50$

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When it comes to light in November that Dave has spent an aggregate of 40 days outside the State on business duties, his BIK for November and December can be recalculated as follows:

<i>BIK for days car was available*</i>	$\text{€}2,923.87 \times 325 / 365 =$	$\text{€}2,603.45$
<i>Less amount processed to date</i>		$\text{€}2,436.50$
<i>Balance</i>		$\text{€}166.95$
<i>Monthly BIK for November and December</i>	$\text{€}166.95 / 2 \text{ months} =$	$\text{€}83.48$

Note: Alternatively, Dave's employer may reconcile his BIK when carrying out a quarterly review in December.

6.8 Records of Business Travel

Whenever a reduced rate of BIK is applied because an employee's annual business travel exceeds 26,000 kms, a logbook (or other record) must be kept in which all business travel is recorded to prove that an employee is entitled to the reduced rate of BIK. This is an area in which Revenue focus on when carrying out BIK compliance checks and it often arises that many employers do not keep adequate records to verify the amount of business travel.

When carrying out compliance interventions, when Revenue encounters a case where an employer:

- Fails to provide details of business or private kilometres for the year, or
- Where the details provided are not satisfactory,

the business kilometres may, in the absence of sufficient evidence to the contrary, be determined by deducting 8,000 kms from the total number of kilometres travelled in the year.

This does not mean an employer should stop retaining records and automatically assume every employee travels 8,000 private kilometres per year, hence all other travel in the car is business travel. In compliance interventions, it is not uncommon for Revenue to estimate business and/or private travel based on factors such as the employee's address in comparison to the location of his normal place of work, nature of the employee's work (e.g. office based or a role involving a lot of business travel), absences from the employment, etc., which has often resulted in Revenue re-calculating the BIK based on the highest % rate of the OMV with the employer being liable for any underpayments of Income tax, PRSI and USC.

6.9 Summary

The following steps should be used to calculate the BIK on a company car:

Step 1	Determine the OMV of the car for BIK purposes
Step 2	Determine the vehicle category based on the CO ₂ emissions of the car
Step 3	Determine the correct rate of BIK (percentage of OMV) based on the annual (annualise where applicable) business kilometres travelled by the employee
Step 4	Calculate the annual BIK liability as the OMV multiplied by specified percentage of OMV
Step 5	Apportion annual amount based on the number of days the car was available for private use (where applicable)
Step 6	Subtract any amount made good to the employer by the employee in respect of the provision or running costs of the car

6.10 Pool cars

Where an employer provides pool cars for its employees, no BIK charge arises as the car is treated as not being available for private use. However, in order to qualify for the pool car exemption, all of the following conditions have to be met:

- The car is made available to, and is used by, more than one employee,
- In the case of each employee, the car was made available to him by reason of the employment,
- The car is not ordinarily used by any one employee to the exclusion of the others,
- Any private use of the car by any employee is merely incidental to his business use, and
- The car is not normally kept overnight at the home of any of the employees.

If all of the above conditions are met, no taxable benefit arises. However, if a single condition is not met, the normal BIK rules apply to those employees to whom the car is available for private use. It is unlikely that many company cars qualify for this “pool car” exemption.

Where it is scheduled and verifiable that an officer of the State (including an officer of a statutory body) is obliged to be “on call” outside of his/her normal working hours to respond to situations giving rise to a possible contravention of law and, for this purpose the officer:

- (a) Is provided with a car during scheduled and verifiable “on call” periods outside of his/her normal working hours; and
- (b) Keeps the car overnight on or in the vicinity of his or her home; and

the car would, but for the obligation in (a) above, be a “pool car”, then such car may be deemed to be a car in a “car pool” for the purposes of the BIK provisions.

6.11 Fuel Cards

The provision of a fuel card by an employer to an employee who drives a company car will not give rise to a taxable BIK for the employee, assuming it is only used to purchase fuel for the employee’s company car. The rate of BIK applied to the company car covers the cost of the fuel for that car.

Where an employer provides a fuel card to an employee in respect of his private car, the full amount spent on the fuel is a taxable BIK where the employee does not drive the car on company business.

Where an employer provides a fuel card to an employee who drives his private car on business journeys, and the amount spent on the fuel card is less than or equal to the amount the employer could have paid in Civil Service travel rates in respect of the business travel, no tax liability will arise. In this scenario, records should be retained verifying the business travel.

6.12 Charging of Electric Cars

A taxable BIK does not arise in respect of the cost incurred by an employer in the provision of a charge point in any of its business premises for the electric charging of vehicles, provided the facility is available to all employees (i.e. no BIK arises where an employee charges his private electric car or van using a charge point provided by his employer at the business premises).

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This exemption does not apply to the provision or installation of a charge point at an employee's private address. A taxable BIK arises in respect of any costs incurred by the employer in respect of the installation of a charge point at an employee's home.

Where an employer provides an electric car to an employee and the employee incurs home electricity costs in charging the car, provided it can be shown that the employer is only reimbursing for the running costs of that employer vehicle, it can be reimbursed tax free. This is subject to the employer retaining sufficient supporting documents to verify the amount of the reimbursed cost.

6.13 Toll Charges

Where an employer pays toll charges for a company car or a private car on a business journey, this does not give rise to a taxable BIK for the employee driving the car. However, where the employer pays toll charges for a company car or a private car on a private journey (e.g. commuting to and from the normal place of work), the amount paid by the employer gives rise to a taxable BIK for the employee driving the car.

6.14 Private use of Company Cars by Employees in the Motor Industry

Many employees (including directors) in the motor industry have the use of several different cars, both new and old, during the course of a tax year. Revenue has agreed to an arrangement for calculating BIK on the basis of agreed average OMV. The arrangement is subject to the conditions set out below.

This arrangement applies to employees who are employed by an employer in one of the categories listed below and who have frequent changes of company cars. For this purpose, frequent changes mean changes for periods of less than 1 month.

The arrangement does not apply to employees who have the exclusive use of specific car(s) for a predictable period(s) of 1 month or greater. In this event, the Income tax, PRSI and USC due by the employee for any particular pay period must be calculated by reference to actual OMV of the car(s) available to the employee in that period.

The employers within the arrangement are:

- Motor retailers who are engaged in selling used cars only
- Franchised motor retailers who are engaged in selling both new and used cars
- Short-term car hire providers
- Motor distributors and car leasing businesses

Employees who normally have the use of cars with an OMV	Motor retailer selling used cars only and short term car hire providers	Motor retailer selling new and used cars	Motor distributors and car leasing businesses
Not exceeding €30,000	€15,000	€18,000	€22,000
€30,001 to €35,000	€18,000	€21,000	€25,000
€35,001 to €40,000	€21,000	€24,000	€30,000
€40,001 to €45,000	€24,000	€27,000	€34,000
€45,001 to €50,000	€27,000	€30,000	€38,000
€50,001 to €55,000	€30,000	€33,000	€42,000
€55,001 to €60,000	€33,000	€36,000	€44,000
Greater than €60,000	€33,000 + note	€36,000 + note	€44,000 + note

Note: plus 75% of the difference between the OMV and €60,000. For example, in the case of a car with an OMV of €80,000, the figure to be used for an employee of a franchised motor dealer selling new and used cars should be €51,000 (€36,000 + 75% of €20,000).

Agreed average OMV to be used

The average OMV to be used is to be determined by reference to the highest value of the car(s), which the employee normally drives. If, occasionally, the employee has the use of a car in a higher or lower bracket, this will not affect the figure for OMV.

Percentage of average OMV to be used

As a simplification measure, Revenue is prepared to allow all cars in the motor industry to be treated a “Category C” car (i.e. all cars will be deemed to have CO₂ emissions between 100 – 139 g/km) as the average for the purpose of calculating the BIK charge from 2023 onwards.

Employee right to opt for actual OMV

An employee may at any time exercise his or her statutory right to have the BIK arising from the availability of company car(s) for private use calculated by reference to the actual OMV of the cars. Where the employee exercises this right, the employer will have to carry out the necessary calculations and retain relevant evidence of the cars made available to the employee during the year.

Records to be kept

It is important for employers to keep records of the company cars driven by all employees including directors, to include the value of the cars driven, the OMV Band and the BIK calculation for each employee.

Non-application of arrangement

Where it arises during a Revenue audit that the employer has not deducted Income tax, PRSI and USC on company cars available to employees for private use, then this arrangement will not apply in calculating the tax liability of the employer. Revenue will revert to the normal method of calculation.

7. Company Vans⁵

Many employers provide their employees with a commercial vehicle such as a company van. If the van is available for private use by the employee, then taxable BIK arises for the employee. The BIK calculation for a company van differs to that which applies to company cars.

7.1 Definition of “van”

A van is defined as a mechanically propelled vehicle which:

- Is designed or constructed solely or mainly for the carriage of goods or other burden,
- Has a roofed area or areas to the rear of the driver's seat,
- Has no side windows or seating fitted in that roofed area or areas, and
- Has a gross vehicle weight not exceeding 3,500 kilograms.

Where a vehicle meets all these criteria, it is regarded as a van, rather than a car for BIK purposes.

No BIK arises in respect of a van, which has a gross laden weight of more than 3,500kgs.

⁵ Taxes Consolidation Act 1997, Section 121A

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7.2 Rate of BIK on a van

Since 1st January 2023, the notional value of the private use of a company van is 8% (previously 5%) of the OMV of the van regardless of the CO₂ emissions of the vehicle and regardless of the amount of business or private travel. 8% of the OMV represents the full BIK charge on a company van. There is no additional BIK charge where the employer pays the road tax, insurance, repairs or where the employer pays for the fuel, even where the employee uses the fuel on non-business journeys. Unlike cars however, there is no reduction in the value of the BIK based on the annual business travel.

The OMV must be calculated in the same manner as for cars (i.e. based on the retail selling price of a single vehicle in the State, inclusive of VAT, VRT and any other associated costs). The fact that certain employers can reclaim the VAT on the purchase of a van is irrelevant for BIK purposes.

For 2023, the OMV of:

- A mechanically propelled van should be reduced by €10,000 before calculating BIK,
- An electric van should be reduced by €45,000 before calculating BIK. An electric van means a van that derives its power exclusively from an electric motor (i.e. it does not apply to hybrid vehicles). **See paragraph 6.4.1 above for more information on the temporary reduction in OMV for 2023.**

While the purchaser of an electric vehicle may qualify for a grant from the Sustainable Energy Authority of Ireland (SEAI), as such grants are paid after the registration of the vehicle, the OMV is not reduced by the value of the SEAI grant.

For 2024, the OMV on an electric van will be reduced by €20,000. For 2025, the OMV of an electric van will be reduced by €10,000. From 2026 onwards, the BIK will be calculated on the OMV of the van with no reduction being applied.

The BIK may be reduced by any contribution made by the employee towards the running costs, provided any such contribution is paid directly to the employer.

Example 18

Vincent is a salesman and is supplied with a company van which is available for his private use for the full year. The van was purchased new for €34,650. This price was inclusive of VAT of €6,480 and VRT of €50. The base cost of the van was €28,170. Vincent's business travel amounted to 31,200 kms. His employer reclaimed the VAT of €6,480 incurred on the purchase of the van. Calculate the notional value of the BIK for Vincent, if any.

Solution 18

OMV of Van	(€34,650 - €10,000) =	€24,650
% BIK		8%
Annual BIK	€24,650.00 @ 8% =	€1,972

Notional pay is calculated on the OMV of the van (inclusive of VAT and VRT).

Example 19

John is an employee, and he is provided with a van which is available to him for private use for the entire year. The van was purchased second hand for €8,000 at the beginning of the year, but

the OMV was €38,000. He travels 25,000 kms of which 4,800 kms are for private usage. The annual running costs of the van are:

<i>Insurance</i>	€1,000.00
<i>Road Tax</i>	€250.00
<i>Maintenance</i>	€500.00
<i>Diesel</i>	<u>€1,500.00</u>
<i>Total</i>	€3,250.00

John pays his employer €10 per week to cover the cost of fuel used on private journeys. Calculate John's BIK, if any, based on the above information.

Solution 19

<i>OMV of van for BIK purposes</i>	$(€38,000 - €10,000) =$	€28,000
<i>Value of BIK</i>	$€28,000 \times 8\% =$	€2,240
<i>Less: John's contribution towards cost</i>	$€10 \times 52 \text{ weeks} =$	<u>€520</u>
<i>Annual BIK</i>		€1,720

Example 20

Jenny works for GHI Ltd. She is provided with an electric company van which has an OMV of €57,750 and has zero CO₂ emissions. She drives 15,000 kilometres per year on business travel. Calculate the annual notional value of the van.

Solution 20

<i>OMV of van for BIK purposes</i>	$€57,750 - €45,000 =$	€12,750
<i>Annual BIK</i>	$€12,750 \times 8\% =$	€1,020

7.3 Van provided for part of a year

Where a van is provided to an employee for part of a year only, the value of the BIK should be apportioned based on the portion of the year for which the van was available for private use. The legislation makes no reference to whether the BIK on a company van should be calculated on a daily, weekly or monthly basis, but any of these is generally accepted by Revenue.

Example 21

Keira is employed and was provided with a company van from mid-May to the end of December which was available for personal use. The van has an OMV of €42,000. Calculate the taxable BIK arising for Keira.

Solution 21

<i>OMV of van</i>	$(€42,000 - €10,000) =$	€32,000
<i>Annual BIK</i>	$€32,000 \times 8\% =$	€2,560
<i>BIK for 7.5 months (mid-May to end December)</i>	$€2,560 \times 7.5 / 12 =$	€1,600

7.4 Van with modifications

Where a van is purchased and it is modified, for example by having a refrigerated unit or shelving fitted to it, the BIK may be based on the OMV of the unmodified van.

However, if a van is modified by adding seats behind the driver's seat and/or by fitting a side window to the rear of the driver or passenger side windows, as these alterations result in the vehicle no longer satisfying the definition of a van, it should be treated as a car for BIK purposes.

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7.5 Concession on provision of company van

Many employees are provided with a company van for the purpose of their work, which they are required to take home with them in the evening, simply because it is more efficient for them to do so. While travel to and from an employee's place of work is private travel which gives rise to a BIK, the legislation provides that where certain conditions are met, no taxable BIK will arise. These conditions are:

- 1) The van is supplied by the employer to the employee for the purposes of the employee's work.
- 2) The employee is required by the employer to bring the van home after work.
- 3) Apart from travelling from work to home and back to work, other private use of the van by the employee is forbidden by the employer, and there is in fact no other private use. Revenue will accept a Tachometer/Tripmeter reading taken each Friday evening and again on Monday morning to show that no private mileage was undertaken over the weekend.
- 4) In the course of his work, the employee must spend at least 80% of his time away from the premises of the employer to which he is attached.

This concession makes sense when it is applied to a technician who spends most of his time visiting clients to carry out work and who needs his van to carry tools, equipment, etc. The requirement that the employee be away from his employer's premises for 80% of the time however must be observed, and Revenue state that where it is not obvious from the employee's duties that he is absent from the office for 80% of the time, a logbook must be kept.

All of the above conditions must be met for the concession to apply.

7.6 Van pools

A taxable BIK will not arise in respect of the private use of a company van which is part of a van pool. A van can be treated as part of a van pool where all the following conditions are met:

- The van is made available to, and is used by, more than one employee,
- In the case of each employee, the van is made available to him by reason of his employment,
- The van is not ordinarily used by any one employee to the exclusion of the others,
- Any private use of the van by any employee is merely incidental to his business use, and
- The van is not normally kept overnight at the home of any of the employees.

8. Other Vehicles

8.1 Crew Cabs and Jeeps

Normally a commercial vehicle will only have seating for a driver and one or two front seat passengers. For BIK purposes, all that needs to be known is whether the vehicle qualifies as a car, or as a van, and this is determined primarily by the design of the vehicle. If a vehicle has seating for a driver and front seat passengers only and **has no side windows or seating to the rear of the driver**, then it will be classed as a van for BIK purposes. Otherwise, it will be classed as a car and it is irrelevant what purpose it is used for and whether it is taxed and insured as a commercial vehicle.

However, crew cabs are vehicles which appear to be commercial vehicles, but which have additional seating which allows them to carry 3 or more passengers, (up to 2 front seat passengers and additional passengers usually seated immediately behind the driver and front seat passengers.

For BIK purposes, crew cabs can be classified as cars, vans or trucks, depending on several factors.

If a crew cab/jeep has a gross laden weight of 3,500kgs or more, it is likely to be regarded as a vehicle not commonly used for private purposes and no BIK charge will arise in respect of the private use of such a vehicle. If a vehicle has a gross laden weight of less than 3,500kgs and has seating for no more than 2 front seat passengers, it is regarded as a van.

However, if a vehicle has a gross laden weight of less than 3,500kgs and has seating for 3 or more passengers, it is regarded as a car for BIK purposes, even where the vehicle has a platform designed for the carriage of goods and regardless of its designation for VRT/VAT purposes.

Adapting a crew cab or car by taking out the back seats and blackening the rear windows, does not change the vehicle from being a car to a van for BIK purposes. It is still classified as being a car due to the original design and purpose of the vehicle.

8.2 Motorcycles

A motorcycle (motorbike) is defined as a vehicle with less than 4 wheels and has an unladen weight which does not exceed 410 kilograms. The annual taxable benefit of a motorcycle available for private use is calculated at 5% of the market value of the motorcycle when it was first provided by an employer as a benefit to that employee or any other employee, plus the amount of any other expenses paid (e.g. insurance, tax, fuel and repairs etc.) less any amount paid by the employee directly to the employer. Motorcycles weighing over 410 kilograms fall within the definition of a car for BIK purposes and the taxable value must be calculated on the same basis as a car.

Example 22

Mark is provided with a company motorbike for deliveries and it is also available for private use. The motorbike is less than 410kgs and has an OMV of €5,000 but was worth €3,500 when purchased second hand and provided to Mark on 1st January. The company also pays the tax and insurance on the motorbike which amounts to €500. Calculate the notional value of the BIK for Mark, if any.

Solution 22

<i>Value of Motorbike when first provided as a benefit</i>	<i>€3,500.00</i>
<i>Rate of BIK</i>	<i>5%</i>
<i>Annual BIK</i>	<i>€3,500.00 x 5% =</i>
<i>Additional Costs – Tax & Insurance</i>	<i>€175.00</i>
<i>Notional Pay (Taxable BIK)</i>	<i>€500.00</i>
	<i>€675.00</i>

8.3 Chauffeur Driven Cars

Where an employer provides a chauffeur driven car to an employee or director, which is available for private use, two separate BIK charges arise i.e. the provision of the car and the expenses incurred by the employer in the provision of the chauffeur i.e. the chauffeur's salary, less any amounts paid to the employer by the employee.

8.4 BIK on Company Vehicles prior to 2023

8.4.1 Company Cars

Prior to 2023, the notional value arising on the private use of a mechanically propelled company car was calculated at 30% of the OMV of the car. However, where the annual business travel

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exceeded certain thresholds the 30% rate was reduced based on the annual business travel as follows:

Annual Business Travel (kms)	% of OMV
Up to 24,000	30%
In excess of 24,000 but not exceeding 32,000	24%
In excess of 32,000 but not exceeding 40,000	18%
In excess of 40,000 but not exceeding 48,000	12%
In excess of 48,000	6%

8.4.2 Company Vans

Prior to 2023, the notional value arising on the private use of a mechanically propelled company van was calculated at 5% of the OMV of the van.

8.4.3 Electric Vehicles

A taxable BIK did not arise in 2022 in respect of an electric car or van, which was available for private use by the employee, where the OMV of the vehicle did not exceed €50,000. This cap applied to all electric vehicles regardless of when they were first made available to the employee.

Where the OMV of the electric vehicle exceeded €50,000, the excess portion was liable to BIK in the same manner as a mechanically propelled car or van (i.e. 30%, 24%, 18%, 12% or 6% of the OMV of the car depending on the annual business travel, or 5% of the OMV of a van).

9. Preferential Loans

When an employee receives a preferential loan from an employer, this means that interest is charged at a rate lower than the specified rate set by Revenue, which includes loans on which no interest is charged. The difference between the amount of interest payable on the loan based on the specified rate set by Revenue, and the amount of interest, if any, which is actually paid by the employee amounts to a taxable BIK.⁶

The specified rate of interest used in calculating the value of a BIK on a preferential loan, depends on whether:

- The loan is a qualifying home loan, or
- The employer's trade involves the making of loans for the purpose buying a home, or
- The loan is an 'ordinary' preferential loan (i.e. any other loan).

The specified interest rate applies in respect of a tax year. Where a loan is only available for part of a year, the BIK must be apportioned accordingly based on the duration the loan was outstanding in the year.

Any loan amount, including any interest payable to the employer, which is written off, is a taxable BIK and is liable to Income tax, PRSI and USC in the year in which it is written off.

9.1 Qualifying Home Loans

If the loan is a qualifying home loan (i.e. the purpose of the loan is to purchase, repair, develop or improve the employee's principal private residence or for paying off another loan used for such purpose), the specified rate is 4% for the current year. Principal private residence refers to

⁶ Taxes Consolidation Act 1997, Section 122

an individual's sole or main residence which can be situated in Ireland, the United Kingdom or any EEA State. An EEA State includes the EU Member States and Iceland, Norway, Liechtenstein and Switzerland. Where a qualifying home loan is provided to an employee at a preferential rate, the BIK calculation is as follows:

- BIK is charged on the difference between the amount of interest paid by the employee and the amount of interest which would have been payable if the interest was calculated at the specified rate of 4% set by Revenue for the current year.

Example 23

John is employed by a pharmaceutical company. He received a preferential loan of €12,000 on 1st January from his employer to carry out some home improvements. He did not make any capital repayments on the loan during this year, but he paid 2% interest on the loan during the year. Calculate the taxable amount of the BIK.

Solution 23

<i>Interest chargeable at specified rate</i>	$\text{€}12,000 \times 4\% =$	$\text{€}480$
<i>Interest paid by employee</i>	$\text{€}12,000 \times 2\% =$	$\underline{\text{€}240}$
<i>Notional Pay</i>	$\text{€}12,000 \times (4\% - 2\%) =$	$\text{€}240$

Note: as no capital repayments were made during the year, the BIK is based on the outstanding loan amount. Where capital repayments are made, the BIK can be calculated on the reducing balance of the loan, or the average balance of the loan as outlined below.

9.2 Employer's Trade Involves the Making of Home Loans

Where an employer grants home loans in the normal course of business (e.g. a bank, credit union, etc.) and the normal rate of interest charged to the public is less than the specified rate set by Revenue for qualifying home loans (currently 4%), no BIK will arise if the employee gets a loan at the same interest rate that is charged to the public and all of the following conditions are met:

- 1) The loan is made at a preferential rate between employer and employee,
- 2) Part of the employer's trade is the making of loans for a stated number of years, at a fixed rate of interest, for the purpose of purchasing a house for occupation by the borrower, **and**
- 3) At the time the preferential loan was made to the employee, the rate of interest charged by the employer to customers for main residence loans made at arm's length was less than the specified rate.

It is important to note that this only applies where the employee actually pays the interest that is charged by the employer. If the employee does not pay the full interest, a BIK will arise based on the difference between the amount of interest payable at the Revenue specified rate and the amount of interest, if any, paid by the employee.

If an employee gets a loan at a reduced staff rate (i.e. lower than the rate charged to customers), the BIK is calculated on the difference between the amount of interest paid by the employee and the amount of interest which would have been payable in that year if the interest was calculated at the specified rate set by Revenue.

Example 24

Michelle is employed by a bank. She received a home loan from her employer. The loan is for 10 years, and the Michelle will pay 2.75% fixed rate of interest on the loan. This is the same rate

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that the bank was charging its customers at the time the loan was granted to Michelle. What are the BIK implications assuming:

- (a) Michelle will not make any repayments of interest or capital on this loan until next year.
- (b) Michelle will pay the 2.75% rate of interest during the year, but no capital repayments are made.

Solution 24

- (a) Although Michelle's employer charged her the same interest rate as it charges to its customers, as no interest was paid by Michelle during this year, a taxable BIK arises based on the difference between the amount of interest paid by Michelle (nil) and the amount of interest payable using the Revenue specified rate (currently 4%).
- (b) If Michelle paid the 2.75% interest during the year, a taxable BIK would not arise as Michelle is paying the same rate of interest as the bank's customers.

9.3 Ordinary Preferential Loans

An ordinary preferential loan is a loan which is not a qualifying home loan (e.g. a loan used to purchase a car or to pay for a holiday, etc.) and the specified rate is 13.5% for the current year.

A taxable BIK arises on the difference between the amount of interest paid by the employee and the amount of interest which would have been payable if the interest was calculated at the specified rate of 13.5% set by Revenue for the current year.

Example 25

Eithne has received a loan of €10,000 from her employer, ABC Finance, to purchase a car and has agreed to pay interest on the loan at the staff rate of 5%. Her employer provides car loans to the public at an interest rate of 9%. Eithne received the loan on 1st June. Calculate the taxable amount of the BIK for the current tax year, assuming:

- (a) Repayments of interest or capital do not commence until the following tax year, and
- (b) Eithne pays the interest in full during the year but does not make any capital repayments.

Solution 25

- (a) As no interest was paid in the current tax year, a taxable BIK arises as follows:

Interest chargeable at specified rate	$\€10,000 \times 13.5\% =$	€1,350.00
Less amount of interest paid by employee		€0.00
Amount liable to BIK for a full year		€1,350.00

As Eithne only obtained the loan on 1st June she is only liable to BIK for 7 months of the year, as follows:

$$\text{Taxable BIK for 7 months: } \frac{\€1,350}{12 \text{ months}} \times 7 \text{ months} = \€787.50$$

- (b) Interest chargeable at specified rate $\€10,000 \times 13.5\% =$ €1,350.00
- Less amount of interest paid by employee $\€10,000 \times 5\% =$ €500.00
- Amount liable to BIK for a full year $\€10,000 \times 8.5\% =$ €850.00

As Eithne only obtained the loan on 1st June she is only liable to BIK for 7 months of the year, as follows:

$$\text{Taxable BIK for 7 months: } \frac{\text{€}850}{12 \text{ months}} \times 7 \text{ months} = \text{€}495.83$$

9.4 Reducing Balance or Average Balance

The BIK on a preferential loan provided by an employer can be calculated on a reducing balance basis, or by using the average balance for the year (i.e. Opening Balance + Closing Balance and divide the total by 2). Where a loan is provided for part of a year, the BIK should be calculated based on the period the loan was available to the employee in the tax year. The basis used by the employer to calculate the interest payable at the preferential rate should also be used to calculate the interest payable at the specified rate.

Example 26

James received a loan of €5,000 from his employer on the 1st February to assist with the purchase of a new car. It is agreed that James will pay 5% interest on the loan. James has agreed to repay the loan at the rate of €500 per month plus interest over 10 months, with the first repayment beginning on 1st March. Calculate his taxable BIK, the interest payable to his employer and the total repayment due based on a reducing balance basis.

Solution 26

As James is repaying the loan in monthly instalments at the beginning of each month, the BIK on the loan can be calculated on the reducing balance method. The BIK is calculated at the rate of 8.5% (specified rate of 13.5% less interest rate charged by employer of 5%) of the outstanding balance at the beginning of each month.

Month	Loan Amount	Capital Repayment	Reducing Balance	% Rate for BIK	Months available	Taxable BIK	Interest			Total Repayment
							Rate Paid	Interest Paid	Total	
01-Feb	5,000	-	5,000	8.5%	1	35.42	5%	20.83	20.83	
01-Mar	5,000	500	4,500	8.5%	1	31.88	5%	18.75	518.75	
01-Apr	5,000	500	4,000	8.5%	1	28.33	5%	16.67	516.67	
01-May	5,000	500	3,500	8.5%	1	24.79	5%	14.58	514.58	
01-Jun	5,000	500	3,000	8.5%	1	21.25	5%	12.50	512.50	
01-Jul	5,000	500	2,500	8.5%	1	17.71	5%	10.42	510.42	
01-Aug	5,000	500	2,000	8.5%	1	14.17	5%	8.33	508.33	
01-Sep	5,000	500	1,500	8.5%	1	10.63	5%	6.25	506.25	
01-Oct	5,000	500	1,000	8.5%	1	7.08	5%	4.17	504.17	
01-Nov	5,000	500	500	8.5%	1	3.54	5%	2.08	502.08	
01-Dec	5,000	500	-	8.5%	1	-	5%	-	500.00	
						194.80		114.58	5,114.58	

In total, James will repay his employer €5,114.58, comprising a capital repayment of €5,000 and interest of €114.58. James will incur a taxable BIK each month (reducing balance x 8.5% / 12 to get the monthly amount) as outlined above, giving rise to an overall BIK figure of €194.80 for the duration of the loan. James is liable to pay income tax, USC and PRSI on the Taxable BIK amount.

Example 27

John is employed by Ready Money Ltd. He received a preferential loan of €15,000 from his employer last year to help fund the purchase of a new car. The loan had an outstanding balance of €12,000 on 1st January this year. John repaid €3,500 during the current year and the closing balance is €8,500 on 31st December. Ready Money Ltd charged 2% interest on the loan and John paid this amount in full. Calculate his monthly BIK liability using the Average Balance method.

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Solution 27

	€
Opening Balance 1 st January	12,000.00
Less Repayments	<u>3,500.00</u>
Closing Balance 31 st December	8,500.00
Average Balance (Opening + Closing) / 2	(€12,000 + €8,500) / 2 = 10,250.00
Interest due at Specified Rate	€10,250 @ 13.5% = 1,383.75
Interest paid by employee	<u>€10,250 @ 2% = 205.00</u>
Notional Pay (BIK amount)	€10,250 @ 11.5% = 1,178.75
Monthly BIK amount	€1,178.75 / 12 = 98.23

9.5 Employer's obligation regarding interest rate on preferential loans

Where an employee obtains a preferential loan from an employer, the specified rate depends on the purpose of the loan. In most cases the loan will probably be an ordinary preferential loan and not a qualifying home loan. However, where an employee states that the loan is a qualifying home loan, Revenue has stated that they require the employer to obtain a signed statement from the employee confirming the purpose of the loan.

9.6 Joint Preferential Loans

If an employer provides a joint preferential loan to an employee and his spouse or civil partner, the employee is subject to BIK on the total amount of the loan, not only the employee's portion.

If the employer provides a joint preferential loan to two individuals (e.g. a co-habiting couple) who are not married or in a civil partnership and only one of them is an employee, BIK is calculated on the employee's portion of the loan only.

9.7 Preferential Loans after Retirement

Where a preferential loan is outstanding after an employee has retired, a taxable BIK arises in respect of the outstanding amount. The BIK is taxable through payroll regardless of whether the individual is a current or former employee. Where the employee does not make good the liabilities to the employer, the value of the benefit should be re-grossed.

9.8 Anti-Avoidance

A BIK charge will arise for any employee (including office holders), former employee or future employee who receives a loan, a benefit or the free use of an asset through a trust, settlement, covenant or other arrangement where the scheme was directly or indirectly, provided, funded or otherwise made available by the employer or former employer. This includes any benefit provided to a person connected to the employee. Where applicable, liabilities are payable under self-assessment by the individual.

Where an employee has paid the liabilities in full and either pays back the loan in full or ceases to have use of the benefit or asset for a period of 12 months, they may apply for repayment of all or part of the tax incurred depending on the circumstances.

10. Accommodation

Where an employee is provided with free or subsidised accommodation, this constitutes a taxable BIK and is liable to Income tax, PRSI and USC under the PAYE system.

Where accommodation is owned by the employer, the taxable BIK is the aggregate of:

- The annual value of the use of the accommodation, and
- Any expense (other than the cost of acquisition) incurred by the employer in connection with the provision of the accommodation, such as the cost of light and heat.

The annual value of the use of employer-owned accommodation is the annual rent which the employer might reasonably expect to obtain for the property (reflective of whether it is furnished or unfurnished) if the tenant had a letting on the following assumptions:

- The letting is on a year to year basis;
- The tenant undertakes to pay all the usual tenant's expenses; and
- The landlord undertakes to bear the costs of the repairs, insurance and any other expenses necessary for maintaining the premises in a state to command that rent.

The annual value of employer owned accommodation should be determined when the accommodation is first provided to an employee and then reviewed annually for as long as the property is available to the employee. The annual value can be reduced by any amount which the employee makes good directly to the employer in respect of the accommodation.

To establish an annual market rent an employer may refer to:

- An independent auctioneer's or letting agent estimate;
- Details of arms-length rents paid for similar properties in the area from property rental websites; and
- Figures on the Central Statistics Office (CSO) website pertaining to average monthly rents provided by the Residential Tenancies Board (RTB).

Employer must be able to support the basis of the annual market rent used in all cases.

Where accommodation is provided and it is not possible to determine the market value of the rent payable, Revenue assess the annual value of the BIK as being 8% of the market value of the property.

Where accommodation is rented at a market rent by an employer for an employee, the taxable BIK is calculated as the actual amount of rent paid by the employer less any amount which the employee makes good to the employer in respect of the accommodation.

Where furniture is provided, BIK is assessable on 5% of the cost of the furniture. However, where the market value of the rent payable reflects the fact that the accommodation is furnished, no additional BIK charge arises on the furniture.

Example 28

Betty is employed by LaLa Ltd and as part of her employment package, she is provided with a furnished apartment. The current market value rent of the apartment is €1,600 per month. Calculate the taxable amount of the BIK.

Solution 28

Taxable BIK $\text{€}1,600 \times 12 \text{ months} = \text{€}19,200$

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10.1 Exempt Accommodation

In certain circumstances, the provision of free or subsidised accommodation is an exempt BIK, which is not liable to Income tax, PRSI or USC. The following are some examples of such exempt benefits:

(a) Student Nurses

Where accommodation is provided to student nurses engaged in grant funded diploma programmes under the auspices of the Dept. of Health/Health Service Executive, no taxable benefit arises.

In all other circumstances the provision of free or subsidised accommodation for nurses, student nurses or other medical staff is a taxable BIK.

(b) Employee required to live on the premises⁷

No taxable benefit arises where an employee (other than a director) is required by the terms of his employment, to live in accommodation provided by the employer in part of the employer's business premises, to enable the employee to properly perform his duties ("better performance test"), and either:

- The accommodation is provided in accordance with a practice which, since before 30th July 1948, has commonly prevailed in similar trades, or
- It is necessary, in the particular class of trade, for employees to live on the premises.

Revenue accepts that the "better performance test" is met in practice where:

- The employee is required to be on call outside normal hours, and
- The employee is in fact frequently called out, and
- The accommodation is provided so that the employee may have quick access to the place of employment.

Examples of such employees include:

- Managers, or night care staff, in residential or respite centres (where such centres are not nursing facilities),
- Governors and chaplains in prisons,
- Caretakers living on the premises (where they are in a genuine full-time care taking job).
- Au Pairs who are required by the terms of their employment to live in and who are on call.

(c) Provision of accommodation plus meals at a temporary work location

As an alternative to paying subsistence or country money to employees, employers may provide accommodation and meals at the temporary location where their employees are working. Where this occurs, Revenue is prepared to accept that a taxable benefit will not arise where the following conditions are satisfied:

- The accommodation provided is not the principal private residence of the employee (i.e. he maintains separate accommodation where he normally resides); and
- If the accommodation is rented by the employer, the rent paid represents the reasonable cost of accommodation for the location; and
- The reimbursement as regards meals represents no more than a reasonable reimbursement of the actual cost.

⁷ Taxes Consolidation Act 1997, Section 118

(d) Temporary accommodation on relocation or assignment

Subject to certain conditions being met, a taxable BIK will not arise where an employer pays the following accommodation costs for an employee:

- 3 months accommodation costs where an employee has to move house to take up employment at a new location for a new or existing employer - full terms and conditions relating this exemption is outlined in the chapter entitled **Expenses and Tax Free Payments**,
- The reasonable cost of accommodation and meals for a temporary assignee for the first 12 months of a temporary assignment into Ireland - full terms and conditions relating this exemption is outlined in the chapter entitled **Residence in Ireland for Tax Purposes**.

10.2 Free use of Land

The method used for calculating the taxable value of the free use of land by an employee is the same as that for premises (i.e. the market value rent it might reasonably be expected to obtain on an open market letting from year to year or 8% of the value of the land where it is not possible to determine the market value rent).

10.3 Accommodation and Healthcare provided to Members of the Permanent Defence Force

A taxable BIK will not arise in respect of any expenses incurred by the Minister of Defence in the provision of accommodation or health care excluding routine eye treatment (provision and repairing of glasses or contact lenses) or cosmetic surgery (unless it is necessary to ameliorate a physical deformity) to a member of the Permanent Defence Force.

11. Medical Insurance

When an individual pays his own medical insurance premium to an authorised insurer (e.g. VHI, LAYA Healthcare, Irish Life Health, etc.), he obtains tax relief at the standard rate (currently 20%) directly from the insurer who reduce his premium by the appropriate amount. This is known as tax relief at source (TRS). Tax relief is limited to the first €1,000 of an adult premium and the first €500 of a child premium.⁸ A child means an individual who is under 21 years of age and an adult is anyone aged 21 or over, even where they are availing of a reduced premium below the full adult price.

There is no requirement for a defined relationship to exist between the policy holder and any other individual named on the policy.

A taxable BIK arises for an employee where his employer pays any part, or all, of his medical insurance premium. The employer is required to pay the net amount of the premium (amount after deduction of TRS) to the insurer and the employer must then pay the TRS amount to Revenue when paying his Preliminary Tax to the Collector General. The taxable BIK is the amount of the gross premium (net premium plus TRS) paid by the employer. However, as the employee did not get to avail of TRS in this scenario, he is entitled to a tax credit equal to the amount of TRS paid by the employer to Revenue.

The employee can make a claim for this tax credit online through myAccount. A claim can be made during the year or after the year has ended. When making a claim during the year, employees should click on “Manage Your Tax”. They then select “Claim Tax Credits” and under the health section select “Medical Insurance Relief – Benefit in Kind”.

⁸ Taxes Consolidation Act 1997, Section 470 as amended by Finance (No.2) Act 2013

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The employee will be required to provide the following information to Revenue:

- The date the policy started,
- Who is covered on the policy and their ages,
- A breakdown of the cost of the policy for each person, and
- The amount paid by the employer.

The tax credit will be granted by Revenue in the employee's Tax Credit Certificate which will be reflected in the RPN made available to the employer. An employee can claim relief for previous tax years by completing an income tax return.

Where both the employee and employer contribute towards the cost of the policy, the tax credit will be calculated based on the portion of the policy paid by the employer only, as the portion of the policy paid by the employee qualifies for tax relief at source, as highlighted in subsequent examples.

Example 29

Paul is single and is employed by ABC Ltd. His employer pays his medical insurance as a BIK which was renewed on 1st January. His gross premium for the year is €900 and ABC Ltd. pays a net premium of €720 (€900 less TRS of €180) to the insurer on his behalf in 12 monthly payments. Calculate Paul's annual tax credits and SRCOP for the current tax year and state the BIK implications.

Solution 29

	Tax Credits	SRCP
Single Person	€1,775	€40,000
PAYE tax credit	€1,775	
Medical Insurance	€900 @ 20% =	€180
Annual tax credits / SRCP		€3,730
		€40,000

It can be seen from the above example that Paul is granted an additional tax credit of €180 (€900 @ 20%) in respect of the medical insurance premium paid by his employer. ABC Ltd should deduct Income tax, PRSI and USC on notional pay of €75 per month, or €900 per year, being the gross premium payable. ABC Ltd should pay €60 per month, or €720 per year, to the insurer and the balance of €180 will be paid to the Collector General when they pay their Preliminary Tax to Revenue.

To summarise:

Gross annual premium	€900
Employer pays insurer net premium of	(€900 x 80%)
Employer pays Revenue	(€900 x 20%)

Employer calculates Income tax, PRSI and USC on notional pay of €900 (€75 per month).

Employee claims tax credit of €180 (€900 x 20%).

The employer should record the gross premium of €900 on the Payroll Submission as the gross value of medical insurance paid by the employer. As the gross premium does not exceed €1,000, the full amount qualifies for tax relief.

Example 30

Jack is single and is employed by BFG Ltd. BFG Ltd pays his medical insurance as a BIK which was renewed on 1st January. His gross premium for the year is €1,800 and BFG Ltd pays a net

premium of €1,600 (€1,800 less the maximum TRS of €200) to the insurer on his behalf in 12 monthly payments. Calculate Jack's annual tax credits and SRCOP for the current tax year, the BIK implications and the total cost to the employer.

Solution 30	Tax Credits	SRCP
Single Person	€1,775	€40,000
PAYE tax credit	€1,775	
Medical Insurance: Max €1,000 @ 20% =	€200	
Annual tax credits / SRCP	€3,750	€40,000

It can be seen from the above example that Jack is granted an additional tax credit of €200 (restricted to €1,000 @ 20%) in respect of the medical insurance premiums paid by his employer. BFG Ltd should calculate Income tax, PRSI and USC on notional pay of €150 per month, or €1,800 per year, being the gross premium payable. BFG Ltd will pay €133.34 per month, or €1,600 per year, to the insurer and the balance of €200 will be paid to the Collector General when BFG Ltd pays its Preliminary Tax to Revenue.

To summarise:

Gross annual premium	€1,800
Employer pays insurance company net premium of	(€1,800 - €200)
Employer pays Revenue	(Maximum €1,000 x 20%)

Employer calculates Income tax, PRSI and USC on notional pay of €1,800 (€150 per month). Employee claims tax credit of €200 (€1,000 x 20%).

The employer should record a gross premium of €1,800 on the Payroll Submission as the gross value of medical insurance paid by the employer.

The total cost to the employer inclusive of employer PRSI (assuming 11.05%) is €1,998.90 (i.e. €1,800 + €198.90 (€1,800 @ 11.05%)).

11.1 Medical Insurance paid by both employer and employee

On occasion, an employer may only pay part of an employee's medical insurance premium (e.g. where the employer is willing to fund the cost of a basic policy but the employee wishes to have an enhanced level of cover or an employee may wish to add members of his family on to his policy for which the employee is prepared to pay any additional costs).

In either circumstance, the employer will generally pay the total net premium to the insurer and recover the employee's contribution by deduction from his salary. The employer must also pay the appropriate amount of TRS to Revenue. The employer will then operate BIK on the gross value of the premium funded by the employer. To calculate the BIK correctly the employer must determine whether he is paying a premium (or part of the premium) in respect of an employee only, or whether he is contributing in respect of additional family members of the employee.

Example 31

Martin works for Rio Ltd. who pays his annual medical insurance premium. The gross cost of his premium is €1,500. Martin wishes to add his wife Paula to the medical insurance policy for an additional €1,500 gross per year, which he is prepared to pay himself by deduction from salary. What is the BIK treatment and what tax credits is the employee entitled to?

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Solution 31

As Rio Ltd has now added Paula to their medical insurance cover, Rio Ltd will be charged a net premium of €2,600 (€1,300 net premium for each spouse) for Martin and his wife. Rio Ltd will then deduct €1,300 from Martin's net pay to reimburse them for the net premium payable in respect of Paula's medical insurance premium.

	<i>Martin</i>	<i>Paula</i>	<i>Both</i>
<i>Gross medical insurance premium</i>	€1,500	€1,500	€3,000
<i>TRS (maximum of €1,000 @ 20% per person)</i>	<u>€200</u>	<u>€200</u>	<u>€400</u>
<i>Net Premium</i>	€1,300	€1,300	€2,600
<i>Rio Ltd pays total net premium to the insurer</i>			€2,600
<i>Martin reimburses Rio Ltd. the net premium for Paula</i>			<u>(€1,300)</u>
<i>Net cost to Rio Ltd.</i>			€1,300
<i>Rio Ltd. pay TRS to Revenue in respect of Martin's premium</i>			<u>€200</u>
<i>Total cost incurred by Rio</i>			€1,500

Martin will claim a tax credit of €200 (limited to a maximum gross premium of €1,000 x 20%) in respect of his BIK as he did not obtain TRS.

Martin will pay his employer €1,300 by net deduction from salary to reimburse his employer for the net premium paid in respect of Paula and will receive no further tax relief on this portion.

Rio Ltd should record a gross premium of €1,500 on the Payroll Submission as the gross value of medical insurance paid by the employer.

Example 32

Liam is employed by MGA Ltd who is willing to pay for a medical insurance policy which has a gross premium of €1,200. Where an employee wishes to have an enhanced policy, MGA Ltd will pay the entire premium to the insurer and deduct the excess amount from the employee's net pay. Liam has opted for a policy which has a gross premium of €2,000 and the renewal date is 1st January. What is the BIK treatment and what tax credits is the employee entitled to?

Solution 32

MGA Ltd will be charged a net premium of €1,800 (€2,000 less TRS of €200) for Liam. As both Liam and his employer are contributing to the one premium, the TRS of €200 must be apportioned between Liam and MGA Ltd. MGA Ltd pay 60% of the premium and Liam pays 40%.

	<i>ER (60%)</i>	<i>Liam (40%)</i>	<i>Total</i>
<i>Gross medical insurance premium</i>	€1,200	€800	€2,000
<i>TRS apportioned between MGA Ltd and Liam</i>	<u>€120</u>	<u>€80</u>	<u>€200</u>
<i>Net Premium</i>	€1,080	€720	€1,800
<i>MGA Ltd pays total net premium to insurer</i>			€1,800
<i>Liam reimburses MGA Ltd the additional net premium</i>			<u>(€720)</u>
<i>Net cost to MGA Ltd</i>			€1,080
<i>MGA Ltd pay TRS to Revenue in respect of their portion of the premium</i>			<u>€120</u>
<i>Total cost incurred by MGA Ltd</i>			€1,200

Liam will claim a tax credit of €120 (equal to the amount of TRS paid by MGA Ltd to Revenue) in respect of his BIK as he did not obtain TRS on this amount of the premium. Liam obtained €80

TRS in respect of his portion of the premium as he is only required to reimburse his employer €720, not €800.

Liam will reimburse his employer €720 by net deduction from salary in respect of the addition premium and will receive no further tax relief on this amount.

When completing the Payroll Submission, MGA Ltd should record the amount of the gross premium of €1,200 (i.e. 60% of €2,000 as the employer is paying 60% of the premium) as the gross value of medical insurance paid by the employer.

11.1.1 Refund of Premiums by Medical Insurance Provider

Some healthcare providers may issue a refund of medical insurance premiums to either an employer or an employee, for example where the insurer experiences a reduction in claims. The impact of these refunds is as follows:

(a) Employer paid Premium – Refunds made to Employer

Where the refund is paid to the employer, the amount refunded can reduce the notional value of the medical insurance for the employee.

(b) Employer paid Premium – Refunds split between Employer and Employee

Where the refund is paid to the employer, but a portion of the refund is attributable to the employee, Revenue state that it should be treated as follows:

- The amount subject to BIK should be reduced to reflect the new gross value of the insurance policy,
- Any refund made to the employee should be subject to BIK.

In IPASS's opinion, the same outcome arises where the amount subject to BIK is reduced by the amount of the refund attributable to the employer and the amount deducted from the employee's net wages is reduced by the amount of the refund attributable to the employee.

(c) Payment of Premium by Individual Policy Holder (no Employer involvement)

Where the refund of the healthcare insurance premium is made to an individual policy holder the refund is not subject to tax.

11.2 Medical Insurance for Employees of Medical Insurers

A taxable BIK arises for an employee of an authorised insurer (i.e. medical or dental insurers) or tied health insurance agent, where the employee, or any family member of the employee, receives a free or discounted medical or dental insurance policy.

The BIK is calculated as the gross premium less any amount paid by the employee or any family member (i.e. the discount offered by the employer represents a taxable BIK). The amount reimbursed by the employee is reduced by the amount of the TRS attributable to the employee portion. This ensures that employees of authorised insurers are treated in a similar manner to an employee employed in any other industry who is provided with medical insurance. Authorised insurers are not required to pay the TRS amount to Revenue as they would be paying the amount to Revenue only to then be subsequently refunded the same amount from Revenue.

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Example 33

Lisa is employed by Insure Health Ltd who provide an 80% discount on its policies for employees with the employee reimbursing the employer for the remaining 20% by net deduction from salary. Lisa's policy has a gross premium of €1,800 and the renewal date is 1st January. What is the BIK treatment and what tax credit is Lisa entitled to?

Solution 33

As Insure Health Ltd offer an 80% discount, this is treated as a taxable BIK. The TRS must be apportioned between Lisa and Insure Health Ltd in proportion to the amount of the policy attributable to each, as follows:

	<i>ER (80% discount)</i>	<i>Lisa (20%)</i>	<i>Total</i>
Gross premium	€1,440	€360	€1,800
Apportionment of TRS	€160	€40	€200
Net Premium	€1,280	€320	€1,600
Taxable BIK for Lisa (i.e. 80% discount offered by employer)			€1,440
Amount reimbursed by Lisa to her employer (Net amount after TRS)			€320

Lisa can claim a tax credit of €160 (equal to the amount of TRS attributable to the employer portion) as she did not obtain TRS on this amount of the premium.

Lisa obtained €40 TRS in respect of her portion of the premium as she is only required to reimburse his employer €320, not €360. No further tax relief is due on this portion.

Insure Health Ltd should record a gross premium of €1,440 on the Payroll Submission as the gross value of medical insurance paid by the employer.

11.3 Medical Insurance – Lifetime Community Rating

A loading applies to in-patient health insurance contracts purchased by or in respect of an individual aged 35 or over. The loading for an insured person is his gross premium before tax relief multiplied by 2% for each year by which his entry age exceeds 34 years, subject to a maximum loading of 70%. For example, where a person aged 44 purchases health insurance for the first time this year, he will incur a 20% (10 years @ 2%) loading on the annual premium for each subsequent year.

A loading does not apply if the individual already had health insurance in place on 1st May 2015 and continues to be insured. If the individual was not insured on 1st May 2015, but previously had health insurance, he can be given credit for the years he was insured, reducing the number of years to which the loading applies.

If an individual cancelled his health insurance for periods of unemployment since 1st January 2008, up to three years of credits can be provided. Regarding someone moving to Ireland, if he lived outside of Ireland on 1st May 2015, but subsequently moves to live in Ireland, a loading will not apply if he purchases health insurance within 9 months of his arrival and continues to be insured.

Where an individual has a break in cover in excess of 13 weeks, this will give rise to a loading on any new policy. A break in cover up to 13 weeks will not give rise to a loading.

Where an employer pays for medical insurance for an employee, BIK will apply to the full cost of the policy i.e. the premium plus the amount of the loading. The tax relief limits discussed above will also apply to the full cost of the policy.

11.4 Dental Insurance

If a person has a dental insurance policy with an authorised insurer (e.g. DeCare Dental) he is also entitled to claim tax relief on the premiums subject to certain restrictions. As with medical insurance, tax relief is limited to the first €1,000 of an adult premium and the first €500 of a child premium. Where an individual holds both a medical insurance policy and a dental insurance policy, both qualify for tax relief, subject to the above limits (i.e. the first €1,000 of each policy qualifies for tax relief).

Where the policy covers **non-routine** dental expenses only, the first €1,000 of an adult premium (€500 for a child) qualifies for TRS at the standard rate of tax. Where the policy covers both **routine and non-routine** dental expenses, the first €1,000 of an adult premium (€500 for a child) qualifies for tax relief at a blended rate of TRS which can be obtained from the TRS section in Revenue (email: trsadmin@revenue.ie).

Where an individual pays the premium directly to the insurer, TRS is granted at source by the insurer.

A taxable BIK arises for an employee where his employer pays any part, or all, of his dental insurance premium. The BIK is calculated in the same manner as medical insurance i.e. the BIK is based on the gross premium, the employer pays the TRS amount to Revenue, and the employee claims a tax credit from Revenue.

When submitting the Payroll Submission, the employer should include the gross premium as the gross value of medical insurance paid by the employer. Where an employer provides medical insurance and dental insurance, the combined gross premiums should be recorded as the gross value of medical insurance paid by the employer.

11.5 Common Mistakes

The most common mistakes that are made in the calculation of BIK on medical insurance include:

- No BIK is calculated and no Income tax, PRSI & USC is paid to Revenue,
- BIK is calculated on the net premium instead of the gross premium,
- Employee fails to claim the tax credit due,
- Employer fails to pay the TRS to Revenue.

12. Goods provided by Employer

Where goods, such as goods which are held in stock by a company, are provided by an employer to an employee, the value of the BIK is determined as the higher of:

- The expense incurred by the employer, or
- The amount realisable on the sale of the goods by the employee (the market value of the goods)

less any payment made by the employee.

In practice, Revenue usually accepts the cost to the employer as being the value of the BIK.

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Where goods have been used or depreciated by the employer before being provided to the employee, it is the value of the goods at the time of their provision to the employee that should be charged to Income tax, PRSI and USC even if that value is less than the cost of the goods to the employer.

Example 34

Peter works for an electrical goods retailer. His employer is so pleased with his performance that he gives him a present of a TV. The TV retails for €350 and it cost the employer €250 plus 23% VAT of €57.50 to buy. What is the notional value for BIK purposes?

Solution 34

Since Peter's employer is giving him a present of the TV, the employer must account for VAT on the TV as if he sold it at cost price and so he must pay that VAT to Revenue. The cost to the employer of the TV therefore, is the VAT inclusive cost which is €307.50.

While the retail price is €350 when sold by his employer, Peter is unlikely to get that much if he was to try to sell the TV privately. In that case, since there is no significant difference between the VAT inclusive cost to the employer and the amount realisable on the sale by Peter, the cost to the employer may be taken as the value of the BIK i.e. €307.50.

13. Vouchers

Where an employer provides a member of staff with a voucher, the value of the benefit subject to Income tax, PRSI and USC is higher of:

- The cost to the employer of acquiring the voucher, or
- The amount realisable by the employee for the voucher

less any payment made by the employee.

The face value of the voucher is not necessarily the amount realisable for the voucher, as any employee will find out if he subsequently tries to sell the voucher, rather than to redeem it against goods or services provided by the company who issued the voucher. In most cases therefore the value of the benefit will be based on the cost to the employer.

However, if there is a “significant difference” between the face value of the voucher and the cost to the employer, the value of the BIK is the amount realisable by the employee for the voucher.

In most cases this will not be a problem and any discount received by an employer for the bulk purchase of vouchers can be passed on to the employees. For example, if an employer buys 500 vouchers with a face value of €200 each, the employer might negotiate a 10% discount on the face value of the voucher. In that case, even though the face value of the vouchers is €200, they only cost the employer €180 each and the value of the taxable benefit is €180.

If there is a significant difference between the face value and the cost to the employer there will not normally be a problem, provided that the cost of the voucher is a true reflection of the market value. However, if the reason for the significant difference arises because the provider of the voucher and the employer are connected then the value of the benefit is the amount realisable by the employee for the voucher.

Note: An employer can provide up to 2 vouchers (or benefits) to an employee per tax year subject to a maximum aggregate value of €1,000 which does not give rise to Income tax, PRSI or USC for the employee. Refer to paragraph 20.1 for more information on this exemption.

13.1 Significant Difference

Just what constitutes a “significant difference” is a matter of personal judgement, but so long as there is no obvious attempt to abuse the situation, there is unlikely to be a problem.

If two companies are closely associated and one company provides vouchers to the other company at a significant discount and these vouchers are then passed on to the employees, Revenue will want to be sure that there is no attempt to abuse or circumvent the rules on the valuation of a benefit. If they are not satisfied that this is the case, then they will seek to have the benefit taxed on the amount realisable by the employees, rather than on the cost to the employer.

14. Employer incurring cost of Income tax, PRSI and USC

It often happens that an employer may want to give an employee a benefit worth a specified sum, say a voucher worth €1,000 and then pay the Income tax, PRSI and USC due, so that the net benefit to the employee is the value of the voucher. This principle applies to benefits where the employer wishes to pay the Income tax, PRSI and USC due whether the benefit is a voucher, or goods presented to the employee. (**Note:** It is possible for an employer to account for any liabilities due on minor and irregular benefits directly to Revenue by entering into a PAYE Settlement agreement with Revenue. This is covered in more detail below.)

If an employer wished to give all of his staff a Christmas voucher or a present and he was prepared to pay all of the Income tax, PRSI and USC due, Revenue state that he must calculate the Income tax, PRSI and USC due in respect of each employee, based on the re-grossed value of the benefit and return these liabilities on the appropriate Payroll Submission. This has the same effect on the employer as giving the employee a bonus payment in addition to his salary.

Example 35

An employer wants to give an employee a holiday voucher with a net value of €2,000 (i.e. the employer is going to incur the cost of the Income tax, PRSI and USC on behalf of the employee).

Calculate how much it will cost the employer to provide this benefit, to include the Income tax, PRSI and USC liabilities involved, assuming the employee is liable to pay tax at 40%, PRSI at 4% and USC at 8%. This example assumes that the employee has already utilised his tax credits, SRCOP, and that he has also utilised his monthly USC COPs for this pay period.

Solution 35

Employee receives a holiday voucher which cost €2,000.

<i>Gross Value of benefit</i>	<i>100%</i>
<i>Less: Employee pays tax at</i>	<i>40%</i>
<i>Employee is liable to employee PRSI of</i>	<i>4%</i>
<i>Employee is liable to USC at</i>	<i>8%</i>
<i>Net value as a percentage of the gross value</i>	<i>52%</i>
	<i>48%</i>

This means that any payment or benefit, which the employee receives after deducting Income tax, PRSI and USC, is 48% of the gross value. To re-gross the €2,000 benefit, divide it by 48%, to arrive at a re-grossed figure of €4,166.67, which is then subject to Income tax, PRSI and USC, as follows:

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<i>Re-grossed value of benefit</i>	$\text{€}2,000 \text{ divided by } 48\% =$	$\text{€}4,166.67$
<i>Less: Income tax @ 40% =</i>	$\text{€}1,666.67$	
<i>Employee PRSI @ 4% =</i>	$\text{€}166.67$	
<i>USC @ 8% =</i>	<u>$\text{€}333.33$</u>	<u>$\text{€}2,166.67$</u>
<i>Net payment</i>		$\text{€}2,000.00$

In addition, the employer must pay employer PRSI of 11.05% on the figure of €4,166.67.

<i>Re-grossed value of benefit</i>		$\text{€}4,166.67$
<i>Employer PRSI</i>	$\text{€}4,166.67 @ 11.05\% =$	<u>$\text{€}460.41$</u>
<i>Total Cost to Employer</i>		$\text{€}4,627.08$

In practice, this scenario may not always be the case and a re-grossed calculation can be difficult to work out. However, many payroll software packages are capable of re-grossing a payment to account for all these factors.

14.1 PAYE Settlement Agreements

An employer may enter into a PAYE Settlement Agreement (PSA) with Revenue to pay the liabilities due on benefits which are:

- Minor, as regards the amount or type of benefit, and
- Irregular, as to the frequency the benefit is provided.

PSAs do not apply to:

- Payments of wages, salaries, bonuses, etc.
- Large benefits such as company cars, free accommodation, preferential loans, etc.
- Round sum allowances.

Under a PSA, instead of re-grossing the payment through payroll, the employer should calculate the liabilities outside of their payroll software and pay them directly to Revenue outside of the PAYE system. The notional value of the benefits included in a PSA should not be included in the employer's Payroll Submission. The notional value of the benefits will not be treated as part of the employee's pay nor will the employee be treated as having paid the tax, PRSI or USC (i.e. the employee cannot claim a repayment of this tax, PRSI or USC).

Essentially, the employer is required to calculate the Income tax, PRSI (including employer PRSI) and USC for each employee included in the PSA based on the re-grossed value of the benefit for each employee.

An application for a PSA must be made by an employer to Revenue before 31st December in the tax year to which it relates, and the liabilities must be paid by 23rd January following the end of the tax year in order to avoid interest and penalties. The liability can be paid on ROS by clicking on Submit a Payment and selecting "Minor and Irregular Benefits" from the dropdown menu in the Payment Type field.

Employers should upload a file (e.g. a spreadsheet) outlining the calculations for each employee via myEnquiries in support of the payment.

15. Staff Discounts

Where goods are sold at a discount to an employee, Revenue will generally not seek any BIK where the goods are sold at cost or at more than the cost incurred by the employer. In this case,

since the goods are being sold, the VAT on the purchase may be reclaimed by the employer, but the sale to the employee is then liable to VAT. So long as the goods are not sold at less than cost there is no problem. If goods are sold at less than cost, then Revenue will regard the difference as giving rise to a BIK.

Example 36

Bright Sparks Ltd, an electrical goods retailer sells a television to a shop manager for €515, which cost €400 plus VAT at 23% to buy. The television would normally retail for €550 including VAT. What are the BIK implications for the manager?

Solution 36

In comparing the cost versus sale price, you should always compare the VAT inclusive price of the goods. The cost of the television was €400 plus €92 VAT, giving a total cost of €492. The sale price to the manager is €515, which is €418.70 plus VAT of €96.30, which is greater than the cost of the television. Therefore, there is no BIK.

What if the shop sold the television to the manager for €300? In that case, since the sale price of €300 (€244 plus €56 VAT) is less than the purchase price of €492 (€400 plus VAT of €92), there is a BIK. The value of the BIK is the difference between the VAT inclusive purchase price of €492 and the sale price of €300 giving a BIK value of €192.

15.1 Exceptions

As always, there are exceptions to the general rule. These occur where goods are sold at market value, which is less than cost to the employer. This can happen where goods are sold at a discounted price in a sale, or because they are shop soiled or devalued in some way. If the goods are sold at market value, then no BIK arises even where the sale price is less than the cost to the employer.

16. Free Use of Company Assets

Where an asset (other than accommodation, company cars or vans) which belongs to the employer is provided to an employee for personal use, the annual taxable BIK is calculated as **5% of the market value of the asset when it was first provided as a benefit** by the employer to **that employee or any other employee**, less any payment by the employee. Any other associated costs incurred by the employer are a taxable benefit, less any amount made good by the employee. Motorcycles weighing less than 410 kilograms fall into this category.

If the employer rents the asset, the taxable BIK is based on the rental cost to the employer where the rental cost is greater than 5% of the market value of the asset when it was first provided as a benefit.

Example 37

XYZ Ltd purchased a valuable painting 5 years ago, which it then handed to its managing director to hang on his wall in his home. The painting cost €5,000 to buy and is now estimated to be worth €8,000. What is the annual value of the BIK?

Solution 37

Although the painting is now worth €8,000 the annual value of the BIK is calculated as 5% of the market value of the painting when it was first provided to the managing director for his personal use.

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$$BIK = \text{€}5,000 \times 5\% = \text{€}250.00$$

If free use of an asset is provided for part of a year, the value of the BIK is time apportioned. If the painting was only available to the managing director for 6 months, the taxable BIK would be as follows:

$$BIK = \text{€}5,000 \times 5\% = \text{€}250.00 \times 6 / 12 = \text{€}125.00$$

17. Third Party Benefits

Where a benefit is provided to an employee by a third party, who is not the employee's employer, it is Revenue's view that the provider of the benefit is responsible for calculating and accounting for Income tax, PRSI and USC. In general, cash or perquisites provided by a third party arising from, or in connection with, an employment or office is within the scope of the PAYE system.

A car or van that is provided, by reason of a director or employee's employment and is available for private use gives rise to a taxable benefit and is therefore subject to Income tax, PRSI and USC.

Other benefits, other than those mentioned above, may be provided tax-free by a third party, provided the following conditions are met:

- The provider of the benefit and the employer of the employee are not connected, either directly or indirectly, in any way, and
- There is no reciprocal arrangement or scheme in place between the third party and the employer or anyone connected with the employer, and
- The employer of the individual has not incurred, either directly or indirectly, any expenses in relation to the benefit.

18. Crèche and Childcare Facilities

A taxable benefit arises for each employee who avails of free or subsidised childcare facilities provided by his employer, whether these facilities are provided solely by the employer, or in conjunction with other employers or persons, and the employer is responsible for financing and managing the facility or providing capital for the construction or refurbishment of the premises.⁹ The taxable benefit arising is liable to Income tax, PRSI and USC under the PAYE system.

The taxable benefit arising is based on the cost to the employer of providing the facilities, which could include such costs as light and heat, electricity, wages, maintenance, insurance, etc. apportioned out among all employees who avail of the facilities.

19. Professional Subscriptions

The payment or reimbursement of an annual membership fee to a professional body on behalf of or to an employee, by an employer, is a taxable BIK and subject to Income tax, PRSI and USC under the PAYE system.¹⁰

However, where an employee incurs expenses which are wholly, exclusively and necessarily incurred in the performance of his duties of employment, he is entitled to claim tax relief from

⁹ Taxes Consolidation Act 1997, Section 120A

¹⁰ Taxes Consolidation Act 1997, Section 118 as amended by Finance Act 2011

Revenue on such expenses.¹¹ For ease of administration and to avoid unnecessary claims for tax relief being made by employees, Revenue is prepared to accept that where the employer pays or reimburses a membership fee to a professional body on behalf of an employee and the employee would have been entitled to claim tax relief on that subscription if the employee personally paid it, then such a membership fee may be paid (or reimbursed) by the employer without giving rise to a taxable BIK.

Membership fees which meet any of the following conditions may be paid by an employer without giving rise to a taxable BIK:

(a) Statutory Requirement or Requirement to hold a Practicing Certificate

There is a statutory requirement for employees working in certain professions to be a member of a designated professional body, association, society, council, etc. in order to exercise that profession, for example medical professionals, architects, etc.

In addition to membership of a professional body, association, society, council, etc., an employee may be legally required to hold a practicing certificate or licence to enable him to carry out the duties of his employment, for example, solicitors, barristers, auditors, etc.

Where the membership of the professional body, association, society, council, etc. meets either one of these requirements, the cost of the membership, and the cost of the practicing certificate or licence where applicable, may be paid by the employer without giving rise to a taxable BIK, where the employee is employed in that capacity.

Example 38

John is employed as an architect. Under the Building Control Act 2007, John is legally required to be registered with the Royal Institute of the Architects of Ireland in order to perform the duties of his employment.

As John cannot legally practice his profession without this membership, a taxable BIK will not arise where John's employer pays his membership fee.

Example 39

Noah is employed as a solicitor. Noah cannot practice as a solicitor unless he is a member of the Law Society with an up to date practicing certificate.

As Noah cannot practice as a solicitor without this membership and practicing certificate, a taxable BIK will not arise where Noah's employer pays his membership fee and the cost of his practicing certificate.

Example 40

Emily is a solicitor, but she is employed to carry out legal research. She does not practice as a solicitor. Other employees working in the same role as Emily are not solicitors.

As Emily is not required to be a member of the Law Society to perform her duties, a taxable BIK will arise if Emily's employer pays her membership fee and the cost of her practicing certificate.

¹¹ Taxes Consolidation Act 1997, Section 114

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(b) Statutory provisions restrict the ability of the employee to fulfil the duties of his employment

Revenue is prepared, in certain other situations, to allow tax relief on professional subscriptions where there is no legal obligation for the employee to be a member of a professional body, but failure to be a member might restrict the ability of the employee to carry out his full duties of employment.

Examples of this would include where an employee is a member of a professional body, and such membership entitles the employee to represent a client of his employer before an appeal commission, tribunal, or other legal body.

Examples would include tax consultants or accountants, but only where the duties of their employment require them to represent clients before the Tax Appeals Commission. In this instance, a taxable BIK would not arise where the employer paid the employee's membership fee as it is required by the employee to perform his duties.

Where an employee is employed as an accountant, but his duties do not require him to represent clients before the Tax Appeals Commission, a taxable BIK will arise where the employer pays his membership fee to a professional accountancy body.

If an employee is a member of 2 or more separate bodies, and each membership provides the same right to the employee, Revenue will only grant tax relief on one membership under this category. Where both are paid for by the employer, under this category a taxable BIK will arise in respect of one of them. However, the second membership may qualify as a tax exempt benefit under one of the following categories.

Example 41

Sophie is employed as a tax consultant and accountant by an accounting firm. She is a member of a taxation body and an accountancy body. Under her terms of employment, she may be required to represent the firm's clients before the Tax Appeals Commission.

As both bodies are recognised by statute as allowing their members to be heard before the Tax Appeals Commission, it is not necessary for Sophie to have both memberships to perform this task. Sophie's employer could pay for one of these memberships without giving rise to a taxable BIK. If the employer pays both membership fees, a taxable BIK will arise in respect of one of the membership fees.

Income tax, PRSI and USC should be applied to any membership fees paid by an employer on behalf of an employee which do not meet any of the exemptions as outlined above.

(c) Professional Membership is Commercially Necessary

Revenue is prepared, to allow tax relief on professional memberships or practicing certificates where there is no legal obligation for the employee to be a member of a professional body, but failure to be a member might restrict the ability of the employer to carry out his trade.

The employer or employee must be able to demonstrate that the expense is commercially necessary as the employee is unable to carry out his duties if he does not hold such professional membership or practicing certificate.

Examples of commercially necessary include where failure of employees to hold a professional membership or practicing certificate would:

- Invalidate the terms of the employer's indemnity insurance policy, or
- Prevent potential customers from entering into business contracts with the employer.

Example 42

Peter is employed as a surveyor. His employer cannot get indemnity insurance unless all surveyors are members of the Society of Chartered Surveyors Ireland.

Peter's employer could pay for his membership without giving rise to a taxable BIK.

(d) Indispensable condition of the tenure of employment

In certain circumstances an employee may be required by his employer to hold a professional membership, qualification or practising certificate. The membership fee may be paid or reimbursed by the employer without giving rise to a taxable BIK (or the employee may claim tax relief on these fees where they personally pay them) where the annual membership fee payable by an employee to a professional body, association, society, council, etc. meets all of the following conditions:

- The duties of the employee and the duties of the employment require the exercise or practice of the occupation or profession in respect of which the annual membership fee refers,
- The employee so exercises or practices the occupation or profession in respect of which the annual membership fee refers, and
- Membership of the professional body is an indispensable condition of the tenure of the employment.

Indicators where a membership or certificate is required to be held as part of the tenure of an individual's employment include:

- If the employee is required to hold such a membership under the terms of his employment,
- If all employees in the same role are required to hold the particular membership or certificate or an equivalent membership or certificate,
- Where the employee would be dismissed or transferred if he:
 - did not acquire such membership or certificate,
 - did not hold such membership or certificate, or
 - failed to maintain his membership or certificate,
- Where job advertisements for the same role require the membership or certificate to be held.

More than one indicator should be met in order for the conditions to apply.

Example 43

Sonia is employed as an in-house accountant with responsibilities for preparation of accounts and other related matters. Under her terms of employment it is an indispensable condition of her employment that Sonia is required to be a member of a recognised accounting body as failure to maintain the membership could result in her being dismissed or transferred to another department which does not require its employees to hold such a membership.

Sonia's employer could pay the membership fee to the accounting body without giving rise to a taxable BIK.

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Generally, only one membership may be provided free from tax where multiple memberships allow the employee to carry out the same or similar duties.

20. Exempt Benefits

20.1 Small Benefit Exemption¹²

Where an employer provides an employee or director with up to 2 small benefits, that is, a voucher or a benefit (a tangible asset other than cash), Income tax, PRSI and USC need not be applied to those benefits, subject to the following conditions:

- A maximum of 2 qualifying vouchers or benefits can be given to an employee per tax year,
- The aggregate value of the benefit or benefits cannot exceed €1,000 in value,
- It cannot be exchanged in full, or part, for cash, and
- The voucher or the benefit does not form part of a salary sacrifice arrangement (i.e. the employee is not permitted to surrender part of his remuneration due under his contract of employment in return for a tax free voucher or benefit).

Where a voucher or benefit exceeds €1,000 in value, the **full value** is subject to Income tax, PRSI and USC under the PAYE system. Where an employer gives an employee 2 vouchers, with the first voucher being less than €1,000, and the second voucher brings the aggregate total over €1,000, only the second voucher needs to be taxed.

It is important to note that monetary payments (e.g. cash, cheques, credit transfer) do not qualify under the small benefit exemption.

The employer can choose when to use the small benefit exemption, rather than be obliged to use it for the first and second voucher or benefit given to an employee in a year which is valued at €1,000 or less. For example, an employer may retain the small benefit exemption to use against a voucher or benefit he intends to give an employee at Christmas and tax other vouchers or benefits (if any) the employee receives earlier in the year.

Example 44

Outline the tax treatment of the following benefits (assuming the small benefit exemption has not otherwise been utilised):

Benefit	Taxation
<i>Voucher for €1,000 given at Christmas</i>	<i>Tax free under small benefit exemption</i>
<i>Voucher for €750 in the Summer and a second voucher for €500 at Christmas</i>	<i>First voucher can be given tax free under the small benefit exemption, but the second voucher is fully taxable as the aggregate value of both vouchers exceeds €1,000</i>
<i>Voucher for €500 in the Summer and a second voucher for €500 at Christmas</i>	<i>Both vouchers can be given tax free under the small benefit exemption as the aggregate value does not exceed €1,000</i>
<i>An employee won employee of the month award 4 times during the year and received a €100 voucher in March, June, September and November (i.e. an aggregate total of €400)</i>	<i>Although the aggregate total of these 4 vouchers do not exceed €1,000, only a maximum of 2 vouchers qualify to be given tax free under the small benefit exemption. The additional 2 vouchers are fully taxable.</i>

¹² Taxes Consolidation Act 1997, Section 112B, as inserted by Finance Act 2015

<p>An employee sacrificed his monthly commission payment in December for a €750 voucher</p>	<p>The €750 voucher is fully taxable as it forms part of an unapproved salary sacrifice.</p>
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20.2 Travel Passes

The provision of monthly or annual bus, train or ferry passes by an employer to an employee or director is not a taxable BIK.¹³ This exemption applies not only to transport services provided by State companies (CIE, Bus Éireann, Irish Rail, Dublin Bus, Luas, Dart, etc.), but also to transport services provided by licensed private transport operators to include travel on commuter ferry services which operate within the State in respect of journeys which begin and end in the State. For the BIK exemption to apply, the employer must incur the full cost of the travel pass and cannot subsequently seek to recover any amounts from the employee.

It is also acceptable for an employer to provide a bus, train or ferry pass to an employee in return for the employee agreeing to have his salary reduced by an equivalent amount. This is known as a “salary sacrifice” arrangement.¹⁴ For the salary sacrifice arrangement to apply, the following conditions must be met:

- There must be a bona fide and enforceable alteration to the terms and conditions of employment exercising a choice of benefit instead of salary,
- The alteration cannot be retrospective and must be evidenced in writing,
- There must be no entitlement to exchange the benefit for cash.

Under the salary sacrifice arrangement, this usually results in a reduction in Income tax, PRSI and USC payable by the employee and a corresponding reduction in employer's PRSI as the amount of the salary sacrifice is deducted from the employee's gross pay before calculating Income tax, USC and PRSI. The salary sacrifice arrangement applies to travel passes provided to **employees or directors only**. It does not apply where there is an arrangement or scheme in place where the employee receives a travel pass together with a compensating payment or where an employee wishes to purchase a travel pass for a family member. An employee may enter into a salary sacrifice for a travel pass more than once per year with the agreement of the employer.

The exemption does not apply to car parking which may be purchased as part of a travel and car parking ticket combination. If the employer purchases a combination travel and car parking ticket and does not recover the cost from the employee, the amount which relates to car parking is a taxable BIK and should be added as notional pay to the employee's salary. If the cost is recovered from the employee, the employer is only permitted to reduce the employee's salary by the amount which relates to travel. The amount which relates to car parking does not qualify for relief and must be deducted from the employee's net pay after statutory deductions.

For employer's operating the salary sacrifice arrangement, where a travel pass is cancelled, this will result in the termination of the salary sacrifice arrangement and may result in a refund. As the amount of the salary sacrifice qualified for relief from Income tax, USC and PRSI, any refund of a salary sacrifice is liable to Income tax, USC and PRSI. It should be recorded in the Pay for Income tax, Pay for USC, Pay for EE PRSI and Pay for ER PRSI on a Payroll Submission, but it should not be recorded in the Gross pay field.

¹³ Taxes Consolidation Act 1997, Section 118

¹⁴ Taxes Consolidation Act 1997, Section 118B

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20.3 Cycle to Work Scheme¹⁵

Where an employer provides a new bicycle or pedelec (bicycle equipped with an auxiliary electric motor - i.e. an electric bike) or cargo bicycle (a bicycle with a special purpose frame designed to carry large or heavy loads, or passengers other than the rider) and associated safety equipment (e.g. helmet, lights, lock, etc.), to an employee or director who agrees to use the bicycle to travel to work, a taxable BIK will not arise.

Alternatively, the employer can operate this scheme using the salary sacrifice arrangement subject to the following conditions:

- There must be a bona fide and enforceable alteration to the terms and conditions of employment exercising a choice of benefit instead of salary,
- The alteration cannot be retrospective and must be evidenced in writing,
- There must be no entitlement to exchange the benefit for cash,
- The choice exercised (i.e. benefit instead of cash) must be irrevocable for the relevant year in which it is made.

Under the salary sacrifice arrangement, this usually results in a reduction in Income tax, PRSI and USC payable by the employee and a corresponding reduction in employer's PRSI as the amount of the salary sacrifice is deducted from the employee's gross pay before calculating Income tax, USC and PRSI.

This scheme may only be availed of once in 4 consecutive tax years by any one employee/director, commencing in the year in which the employee was first provided with the bicycle. For example, where an employee was provided with a bicycle at any time during 2019, the period of 4 tax years expired at the end of 2022, and this employee could now avail of the scheme again in 2023.

The maximum amount of expenditure which qualifies under this scheme in respect of any one employee or director is €1,250 for bicycles and €1,500 in respect of a pedelec. Since 1st January 2023, the maximum amount of expenditure which qualifies under the scheme in respect of a cargo bicycle or electric cargo bicycle is €3,000. Hence, if an employer purchases a bicycle for €600 and gives it to an employee, the full amount is a tax exempt BIK, or alternatively the employee's gross pay can be reduced by €600 under the salary sacrifice arrangement.

If the bicycle cost €1,500, the first €1,250 would be a tax exempt BIK and the remaining €250 would be a taxable BIK. Alternatively, under the salary sacrifice arrangement, the first €1,250 should be deducted from the employee's gross pay before the calculation of Income tax, PRSI and USC and the remaining €250 should be deducted from the employee's net pay.

The employer has up to 12 months to recover the cost of the bicycle up to the first €1,250 (or €1,500 in the case of a pedelec or €3,000 in respect of a cargo bicycle) from the employee under the salary sacrifice arrangement. However, where any excess amount is not recovered immediately (on the next pay day) from the employee, it gives rise to a taxable BIK for the employee in the form of a preferential loan until such time as the amount is repaid to the employer.

The employer must purchase the bicycle. It is not permitted for the employee to purchase a bicycle and then seek reimbursement from the employer. This scheme does not apply where:

¹⁵ Taxes Consolidation Act 1997, Section 118

- The bicycle is not being primarily used for travelling to and from work,
- There is an arrangement or scheme in place where the employee receives a bicycle together with a compensating payment, or
- An employee or director wishes to obtain a bicycle for another family member.

The salary sacrifice arrangement for either a bicycle under the Cycle to Work Scheme (subject to the maximum limit), or a travel pass, operate in a similar manner through payroll.

Example 45

Jenny is single and earns a monthly salary of €3,916.67 (€47,000 per year). She currently pays her bus fare from her net take home pay. If her employer provided her with a travel pass to the value of €1,200 per year (€100 per month) and reduced her gross pay by this amount, the benefits for Jenny and her employer are as follows:

Solution 45

Currently Jenny's monthly net take home pay (with no travel pass) is calculated as follows:

Gross Pay	€47,000 / 12 =	€3,916.67
SRCP	€40,000 / 12 =	€3,333.34
Gross Tax	€3,333.34 @ 20% =	€666.66
	€583.33 @ 40% =	€233.33
		€899.99
Less Tax Credits	€3,550 / 12 =	<u>€295.84</u>
Tax Liability		€604.15
EE PRSI	€3,916.67 @ 4 % =	€156.67
USC		
Income up to Rate 1 COP	€1,001.00 @ 0.5% =	€5.00
Excess to Rate 2 COP	€909.00 @ 2% =	€18.18
Balance of pay at Rate 3	€2,006.67 @ 4.5% =	<u>€90.30</u>
Net Take Home Pay		€113.48
		€3,042.37
ER PRSI	€3,916.67 @ 11.05% =	€432.79

If her gross pay is reduced by the value of the bus pass (€100) the saving for both Jenny and her employer is calculated as follows:

Gross Pay	€3,916.67
Less Bus Pass	<u>(€100.00)</u>
	€3,816.67
SRCP	€40,000 / 12 =
	€3,333.34
Gross Tax	€3,333.34 @ 20% =
	€666.66
	€483.33 @ 40% =
	<u>€193.33</u>
	€859.99
Less Tax Credits	€3,550 / 12 =
Tax Liability	<u>€295.84</u>
	€564.15

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<i>EE PRSI</i>	$\text{€}3,816.67 @ 4\% =$	$\text{€}152.67$
<i>USC</i>		
<i>Income up to Rate 1 COP</i>	$\text{€}1,001.00 @ 0.5\% =$	$\text{€}5.00$
<i>Excess to Rate 2 COP</i>	$\text{€}909.00 @ 2\% =$	$\text{€}18.18$
<i>Balance of pay at Rate 3</i>	$\text{€}1,906.67 @ 4.5\% =$	<u>$\text{€}85.80$</u>
<i>Net Take Home Pay</i>		<u>$\text{€}108.98$</u>
		$\text{€}2,990.87$
<i>ER PRSI</i>	$\text{€}3,816.67 @ 11.05\% =$	$\text{€}421.74$
<i>Saving for both employer and employee</i>		
<i>Employee:</i>		
<i>Original Income tax, PRSI and USC liabilities</i>		$\text{€}874.30$
<i>Revised Income tax, PRSI and USC liabilities</i>		<u>$\text{€}825.80$</u>
<i>Net saving per month</i>		$\text{€}48.50$
<i>Original Net Pay</i>		$\text{€}3,042.37$
<i>Revised Net Pay</i>		<u>$\text{€}2,990.87$</u>
<i>Difference</i>		$(\text{€}51.50)$

Although Jenny's monthly net pay is reduced by €51.50, she will not have to pay for the cost of her travel out of her net pay, which would at least be equal to, if not greater than, the €100 cost of the travel pass. The net saving of €48.50 per month is based on a saving of 40% tax, 4.5% USC and 4% PRSI.

<i>Employer:</i>	<i>Original Employer PRSI liability</i>	$\text{€}432.79$
	<i>Revised Employer PRSI liability</i>	<u>$\text{€}421.74$</u>
	<i>Net saving per month</i>	$\text{€}11.05$

20.4 Health Benefits and Expenses

Since 1st January 2021, a taxable BIK does not arise in respect of costs incurred by an employer in providing the health benefits as outlined below. Where an employer incurs a cost in providing, or reimburses an employee in respect of, the following health benefits or expenses, a tax liability will not arise where the qualifying conditions are met as outlined below.

While the legislation states that the cost must be incurred by the employer (i.e. the cost must be paid directly by the employer to the provider), Revenue also allow the tax exemption to apply where the employee incurs the cost and is subsequently reimbursed by the employer, subject to the expense being vouched and all other conditions being met.

Where an employee is reimbursed by his employer for any of the following health expenses he has incurred, he is not be entitled to claim tax relief on the portion of those expenses which has been reimbursed. Any portion of the expense, which is not reimbursed by the employer, or otherwise (e.g. health insurance), may qualify for tax relief in the usual manner.

A **taxable BIK will arise** for an employee where his employer incurs an expense in providing a medical check-up, health care (or incurs health expenses), Covid-19 testing or flu vaccination for a family member of that employee.

20.4.1 Medical Check-up – No Contractual Requirement

Where there is no contractual requirement for an employee to undergo a medical check-up under the terms of his employment, his employer may provide him with one medical check-up per tax

year which will be exempt from tax, provided such check-ups are made available to all staff generally. Any additional medical check-ups provided by the employer will give rise to a taxable BIK.

20.4.2 Medical Check-up – Contractual Requirement

Where there is a contractual requirement for an employee to undergo a medical check-up under the terms of his employment, there is no limit to the number of check-ups which may be provided by his employer free of tax.

20.4.3 Flu Vaccine

A taxable BIK will not arise in respect of expenses incurred by an employer in the provision of an annual flu vaccination, where they are made available to all staff. Employers can arrange for employees to get the flu vaccine by:

- Engaging a registered practitioner to administer the vaccination at the workplace,
- Making a payment directly to a registered practitioner for administering the vaccination outside of the workplace, or
- Reimbursing the employee for the cost of acquiring the vaccination themselves (a receipt must be provided by the employee).

20.4.4 Covid-19 Testing

A taxable BIK does not arise in respect of costs incurred by an employer where the employer carries out Covid-19 testing on an employee at the workplace, engages a third party to do such testing on behalf of the employer, or where an employer provides a Covid-19 test kit to an employee for self-administration.

This exemption is subject to the following provisions:

- The test is necessary for the performance of the duties of office or employment of the director or employee, and
- Tests are made available to all employees generally where necessary for the performance of the duties of employment.

20.4.5 Health Care and Health Expenses

A taxable BIK will not arise where an employer incurs an expense in providing health care or incurs health expenses on behalf of an employee, once access is made available to all staff generally. This exemption applies in respect of health expenses or health care which would otherwise qualify for tax relief if the employee paid them himself.

The definition of health care and health expenses which can be paid tax free by the employer are explained in detail in the chapter entitled **Personal Tax Credits and Reliefs**.

20.5 In-house Medical Plans

Some employers operate in-house medical plans under which employees contribute to and claim from the plan. Employers will in some cases contribute to the plan to the extent that the total value of claims by the employees, exceed the total value of the contributions made by employees in the relevant year. In other cases, employers may employ or pay a retainer to a general practitioner. Prior to August 2022, Revenue guidance indicated that a taxable BIK did not arise in respect of the employer's contribution to the plan or payment to a general practitioner.

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Since August 2022, updated guidance from Revenue indicates that where an employer contributes to an in-house medical scheme, a taxable BIK will arise in respect of the amount contributed. The benefit is the total cost incurred by the employer in supplementing the resources in the scheme and should be distributed between the employees who made a claim from the scheme in that tax year. The value of the benefit should be apportioned having due regard to the value of claims made by each employee in that tax year in a fair and reasonable manner.

Where an employee does not join a scheme or does not make a claim from a scheme in a tax year, that employee will not incur a taxable BIK.

The guide also states that employers who operate an in-house medical scheme are obliged to provide the details of the scheme to Revenue. Employers who operate an in-house medical plan may wish to contact Revenue to verify the tax treatment of their own medical plan.

20.6 Sports and Recreational Facilities

Sports and recreational facilities provided for staff on the company's own premises are an exempt BIK, provided the facilities are made available for all employees. If the facilities are not made available to all employees, the cost of providing the service must be apportioned amongst all the employees entitled to avail of the facilities, excluding those employees who have notified the employer of their intention not to avail of them. The costs which are then apportioned to these employees are a taxable BIK.

20.7 Car Parking

Car parking facilities provided for employees are not a taxable BIK, even where spaces are rented specifically for the sole use of nominated members of staff.

20.8 Seasonal Parties and Other Events

As a concession, a taxable benefit will not arise on seasonal parties, special occasion meals or other inclusive events such as a sports day for staff, provided the expenses incurred are reasonable and the events are available to all employees. This concession also applies where a spouse or partner accompanies an employee and the expenses incurred are reasonable.

A BIK will not arise where an employer incurs reasonable costs in hosting a virtual seasonal party for their employees. Reasonable costs include costs typically incurred in hosting a face-to-face event. This includes the cost of delivering or providing food and drink to employees in advance of or during the event. The event must be open to all employees.

Vouchers provided to enable employees to purchase food or drink for the event are not included. Such vouchers will be taxable unless they are covered by the Small Benefit Exemption.

Where an employer sends flowers to an employee (e.g. on the birth of a child or the death of a family member), a taxable benefit will not arise. Where an employer provides an employee with a voucher or benefit (e.g. on marriage, birth of a child, etc.), a taxable benefit will arise, unless it is covered by the small benefit exemption. Any gift in cash is fully taxable.

20.9 Provision of Newspapers, Periodicals, etc.

Where an employer provides free periodicals, newspapers etc. to staff which are generally related to the employer's business, no taxable benefit will arise.

20.10 Uniforms and Protective Clothing

Where an employer issues protective clothing or clothing bearing company logos, or clothing of such a colour and design as to be readily identifiable as a uniform and where the clothing remains the property of the employer, no BIK will arise.

20.11 Social Clubs

Where an employer contributes funds to a company social club and these funds are then used for the benefit of the employees, no taxable benefit will arise provided the club decides how the money is to be spent.

20.12 Entertainment Expenses

Payments to employees, which merely reimburse vouched expenses actually incurred wholly, exclusively, and necessarily in the performance of the employee's duties (including directors) are not to be treated as taxable payments. The same treatment applies to vouched entertainment expenses. However, such entertainment expenses will not be allowed as a deduction in computing the employer's profits or gains for Income/Corporation tax purposes.

20.13 Employee interaction with a client/customer of the employer

Where an employer reimburses an employee for the expense the employee incurred while having lunch with a client, such expenses should not be regarded as a taxable BIK.

Where attendance at a sporting event is shown to be carrying out a function of the employee's duties, the reimbursed cost should not be regarded as a taxable BIK.

20.14 Employer paying Taxi Fares

The payment of taxi fares for non-business journeys (e.g. travel to and from work) is regarded as a taxable benefit and liable to Income tax, PRSI and USC. However, Income tax, PRSI and USC need not be applied to the provision of a taxi to transport an employee from work to home on an irregular basis, where the employee is required to work until after 10.00pm and finishes work before 6.00am. The exemption applies to travel from work to home, but not from home to work. Irregular, in this context, may be regarded as anything up to 60 journeys per year.

A taxable benefit will not arise where an employer provides a disabled employee (i.e. an employee with physical or mental impairment which has a substantial and long-term adverse effect on the employee's ability to carry out normal day to day activities) with taxis to get to and from work, who would be in difficulty or would find it impossible to use public transport to get to and from work.

In all other circumstances, Income tax, PRSI and USC must be applied to such outlays, unless the travel is business travel. Where the taxi is shared by more than one employee, an apportionment of the cost between the employees will be necessary and each employee will be liable to Income tax, PRSI and USC on their portion of the cost.

20.15 Provision of a Bus Service

Where an employer provides a bus service to collect employees to bring them to work and/or bring them home for free or at a discounted rate, this would normally be considered a taxable BIK as it relates to private travel. However, Income tax, PRSI and USC need not be applied where all of the following conditions are met:

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- The service is made available to employees generally whether they use it or not, and
- The main use of the service is for qualifying journeys for employees (i.e. journeys that are between home and work or between workplaces).

20.16 Air Miles

Employees may receive air miles from airlines or their travel partners because of frequent air travel for work, which they may redeem against personal travel. This does not give rise to a taxable BIK for the employee.

20.17 Security Assets or Services

Where an employer incurs expenses in providing a security asset or service for use by a director or employee, a taxable benefit will not arise if there is a credible and serious threat to the personal safety of the director or employee that arises wholly or mainly from his employment.¹⁶

This applies only for those whose work exposes them to a very real threat to their physical safety and the provision of the security asset or service is for the sole purpose of meeting that threat.

A security asset includes equipment or a structure (e.g. alarm, security camera, security gate, etc.) but does not include the provision of any mode of transport or dwelling to include surrounding grounds. The provision of a security asset or service must result in the improvement in the director or employee's personal physical security.

This exemption cannot be applied for:

- Security measures against the kind of general criminal threat which all citizens face to a greater or lesser degree,
- Expenditure incurred to protect against a threat to property (from burglary or larceny), or
- Security measures taken against threats not connected with an employee's work.

Where an employee incurs the cost of a licence required under the **Private Security Services Act 2004** to enable him to perform the duties of his employment, the employee can claim tax relief at his marginal rate of tax in respect of this cost by contacting Revenue. Where the cost of the licence is incurred by an employer on behalf of an employee or the employer reimburses the employee for such cost, Revenue accepts that no taxable benefit arises for the employee in respect of such a payment.

20.18 Work Permits and Residence Permits

The cost incurred by an employer in obtaining a work permit or entry visa for an employee is not regarded as a taxable BIK. A work permit is required by non-EEA and non-Swiss nationals to work in Ireland.

An individual who is not a citizen of the EEA or Switzerland must also register with the Immigration Service if he wishes to stay in Ireland for more than 90 days. If permission is granted, he will be issued with an Irish Residence Permit (IRP) which contains the individual's name and photograph. An IRP is needed by an individual to remain in Ireland whether he is employed or not. Where the duties of the employment require the employee to stay in the State for more than 90 days, the employee would not be able carry out those duties without registering for an IRP. A taxable BIK will not arise if an employer pays the IRP registration fee (currently €300) for an employee.

¹⁶ Taxes Consolidation Act 1997, Section 118A

21. Other Benefits

21.1 Pension Schemes

Where an employer pays contributions on behalf of an employee to a Revenue approved occupational pension scheme or Personal Retirement Savings Account (PRSA), no taxable benefit arises (i.e. the employer contribution is not liable to Income tax, PRSI or USC).

An employer contribution to an employee's Retirement Annuity Contract (RAC) is a taxable BIK and is liable to Income tax, USC and PRSI through payroll. However, the employee can avail of tax relief on these contributions subject to the age related pension contribution limits, as if they were paid by the employee.

Prior to 2023, although not taxable through payroll, the amount of any employer PRSA contributions must be reported on a Form P11D if one is received from Revenue for completion.

21.2 Permanent Health Insurance schemes

Permanent Health Insurance (PHI), also known as Income Continuance Plan (ICP), are a type of insurance scheme which makes periodic payments (a portion of an employee's salary) to an individual if he is unable to work due to illness or injury. These schemes can be group schemes or individual schemes, and they can be Revenue approved or unapproved.

21.2.1 Revenue Approved Schemes

Where an employer contributes to a Revenue approved PHI scheme on behalf of an employee, no Income tax or PRSI liability arises where the overall contribution (employee and employer combined) does not exceed 10% of the employee's income. However, USC applies to an employer contribution to a PHI scheme.

Where the overall contribution exceeds 10% of the employee's income, any excess contribution is a taxable BIK for the employee and subject to Income tax, PRSI and USC. In practice, it is unlikely for a PHI contribution to exceed 10% of an employee's income.

21.2.2 Unapproved Schemes

Any premium paid by an employer to an unapproved scheme on behalf of an employee is a taxable BIK for the employee and liable to Income tax, PRSI and USC.

21.2.3 Employee Protection Insurance

It is common for employers to have Employee Protection Insurance for their employees which is not a Revenue approved PHI policy. The premium is paid by the employer based on the number of employees and the total amount of salaries of the covered employees. Employees are generally not required to provide any medical information or history. The insurer would not have the complete personal details for each employee such as exact salary, etc. until a claim is made on the policy.

Although these schemes have the appearance of a PHI scheme, they do not meet the statutory definition¹⁷ of a Revenue approved PHI scheme, as they do not provide for periodic payments to an **individual** in the event of loss or diminution of income in consequence of ill-health.

With Employee Protection Insurance, the contract is between the employer and the insurance company, and they provide for a payment to be made to the employer in the event of an employee

¹⁷ Taxes Consolidation Act 1997, Section 125

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being absent on sick leave, to enable the employer to continue to pay the employee while he is out sick. The employer is the beneficiary of the policy. There is no direct contract between the insurance company and the employee.

Payment of the premium by the employer does not give rise to a taxable BIK for the employees as there is no benefit derived by any specific employee until a claim is made.

If an employee is absent on sick leave, and a claim from the employer has been approved, the insurer will make a payment directly to the employer to cover a percentage of the employee's salary which the employer in turn pays to the employee. As this is a payment of emoluments from the employer to the employee, the employer should continue to deduct income tax, USC and PRSI (employee and employer) through payroll.

21.3 Staff Canteens

The provision of free or subsidised meals in a staff canteen is not a taxable BIK, provided the facility is available to all members of staff. If the facility is not available to all staff, the total cost of providing the facility must be apportioned amongst all the staff entitled to avail of them. No cost should be attributed to an employee who specifically indicates that he does not wish to and does not use the facilities provided.

21.4 Club Subscriptions

Where an employer pays corporate or personal subscriptions to sports, social or recreational clubs on behalf of specific employees, the amount paid is a taxable BIK subject to Income tax, PRSI and USC, regardless of whether, or to what extent, the employees avail of the facilities.

Where an employer makes a single payment to provide a benefit for a number of his employees, a taxable benefit will arise and the cost incurred by the employer must be apportioned between all of the employees who are entitled to benefit from this payment, excluding any employee who has clearly indicated that he does not wish to avail of any such benefit.

21.5 Computers and Office Furniture

Where an employer provides an employee with a laptop or desktop computer, monitors, printers scanners, office furniture, etc. for business use, no taxable benefit will arise in respect of the private use of that equipment provided that the private use is incidental. Where it can clearly be demonstrated that the equipment was provided for and was used for business purposes, Revenue will be satisfied that any private use is incidental. The same also applies in respect of any broadband connection provided to an employee in the employee's home.

21.6 Phones and Mobile Phones

Where a company provides an employee with a mobile phone for business purposes and the private use of the mobile phone is incidental, no taxable BIK will arise.

A taxable benefit will not arise where an employee is reimbursed by his employer for actual expenditure incurred, including the relevant proportion of line rental, in respect of business use of a private telephone line or personal mobile telephone. Records in support of the calculation of the amount reimbursed tax free must be kept by the employer for inspection by Revenue.

Where an employee has two phones in his home and one of these is provided by his employer for business use, no taxable BIK will arise in respect of the costs associated with this phone, which are paid by the employer, once private use is minimal.

Where an employee is required to be on call outside normal working hours and uses his personal telephone or mobile phone, the employer can reimburse the employee up to 50% of the cost of their bill including line rental, without giving rise to a taxable BIK.

21.7 Corporate Charge Cards (Credit/Debit Cards)

Where a company charge card is provided to an employee, no taxable BIK will arise to the extent that the card is used for business purposes. However, if the employee uses the card for private purposes and the costs are not reimbursed to the employer, the cost incurred by the employer is a taxable BIK on the employee.

21.8 Course or Exam Fees

Refunds of course or exam fees to an employee or the direct payment of course or exam fees by the employer are not a taxable benefit, provided the course is relevant to the business of the employer.

A course is regarded as relevant to the business of the employer where it leads to the acquisition of knowledge or skills, which are:

- Necessary for the duties of the employment, or
- Directly related to increasing the effectiveness of the performance of the employee's present or prospective duties in the office or employment.

If a course cannot be regarded as relevant to the business of the employer, the fees paid or reimbursed by the employer will be regarded as a taxable benefit.

21.9 Examination Awards

A cash award, bonus or salary increase awarded to an employee on passing an exam or acquiring a qualification is a taxable payment. A payment made to an employee to reimburse him for the cost of a laptop or other such equipment is regarded as a taxable benefit and cannot be reimbursed tax free.

A payment made to an employee in reimbursement for certain expenses incurred by the employee in studying for and sitting an examination may be paid tax free where all of the following conditions are met:

- The course must have some relationship to the employee's duties of employment,
- The amount reimbursed is only in respect of expenses necessarily incurred,
- The payments can be vouched to receipts, and
- Proper governance and controls are in operation along with supporting records.

This only extends to the cost of course material (other than those provided as part of the course fees) and certain travel expenses. In relation to travel expenses, if the employee travels directly from home to the course/exam or returns directly to home, travel expenses must be calculated by reference to the shorter journey between either the employee's home and the course/exam venue or the normal place of work and the course/exam venue.

21.10 Exceptional Performance Award

Where an employer has a scheme in place to reward exceptional performance, any award (payment or benefit) received under such a scheme is fully taxable and liable to Income tax, PRSI and USC in the normal manner.

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If an employer wishes to pay the tax on an exceptional performance award, so that the employee receives the award “tax free”, the value of the award made must be re-grossed for the purposes of calculating the Income tax, PRSI and USC to be paid by the employer.

21.11 Long Service Awards

An employer may make a long service award to an employee, which will not be regarded as a taxable BIK, subject to the following conditions:

- The award is made as a testimonial to mark long service of not less than 20 years,
- The award takes the form of a tangible article(s) of reasonable cost,
- The cost does not exceed €50 for each year of service, and
- No similar award has been made to the recipient within the previous 5 years.

A “tangible article” is an award other than cash or vouchers, such as a watch or a TV. If any of the conditions above are not met, Income tax, PRSI and USC must be applied to the value of the award.

21.12 Staff Suggestion Schemes

Any payments or benefits provided to an employee under a staff suggestion or award scheme are a taxable BIK. The value of the BIK is the amount of the payment or benefit provided to the employee.

21.13 Tips and Gratuities

If an employee receives tips from a customer which are routed through the employer, the employer must operate Income tax, PRSI and USC on such payments when they are paid to the employee. This could happen where a customer pays tips by cash or credit card, and they are then collected by the employer and distributed among the employees.

If the employee receives the tips directly from the customer, there is no obligation on the employer to operate Income tax, PRSI and USC. However, the employee is obliged to declare these tips in his annual return of income to Revenue.

22. Form P11D

A Form P11D is a return by an employer of benefits, non-cash emoluments and payments provided to directors and employees, which were not subject to Income tax under the PAYE system. Revenue issues this form to a selection of employers each year, for completion within the date specified by Revenue which is generally one month from the date of the issue of the form. It should be noted that employers are only required to complete a Form P11D if one is received from Revenue for a particular tax year. Details required include the PPSN and name of the employee/director together with details of the following benefits provided to employees:

- Un-recouped Income tax, and
- Any other non-cash benefits which were not subject to Income tax, PRSI and USC.

A schedule showing these details may be submitted instead of completing the Form P11D provided the form is endorsed to that effect and the declaration on the form is signed.

Details of share options and other forms of share based renumeration provided to employees are not required to be included on a Form P11D as such benefits are covered by separate reporting obligations.

Failure to submit a Form P11D within the stated time limit can give rise to a penalty of €3,000 which can increase to €4,000 where the form is still not submitted by the end of the tax year in which it was issued.

23. Records

An employer is required to keep a record of all benefits provided and the computation of the amount of each taxable benefit in respect of each employee. Where a benefit requires the recording of business travel, a logbook should be used. Where an employer requires an employee to make a payment directly to the employer in respect of a BIK provided, a record of any amount recovered from an employee through payroll will generally be recorded on a payslip. A record should also be kept of any amount recovered from an employee other than by way of normal deduction through payroll (e.g. if an employee was to make a cheque payable to his employer).

All records, calculations and documentation relating to the valuation of benefits provided to employees must be retained by the employer for examination in the event of an audit. The records must be kept for 6 years unless Revenue advises otherwise.

24. Payroll Submission

Notional pay must be added to the employee's wages/salary with the aggregate amount being recorded as the employee's gross pay on a Payroll Submission. The Payroll Submission also contains specific entries for:

- The gross value of medical insurance paid by the employer for an employee (i.e. the amount which is a taxable BIK), **and**
- The value of taxable benefits provided to an employee. This refers to the value of any taxable benefit which is included in the employee's gross pay, other than the value of share based remuneration.

Example 46

Zara has a salary of €3,000 per month, a company car with a notional value of €500 per month, and medical insurance with a notional value of €100 per month. How should these be recorded on a Payroll Submission?

Solution 46

<i>Gross pay</i>	€3,600
<i>Medical Insurance paid by the employer</i>	€100
<i>Taxable Benefits</i>	€600

CHAPTER 23

Share Based Remuneration

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-

1. Introduction

Share based remuneration simply means rewarding employees with shares in a company (usually their employer company). There are a number of different forms of share based remuneration schemes which employees may benefit from, such as:

- Share Awards – free or discounted shares awarded to the employee
- Share Options – the option to buy shares at a future date at a predetermined price
- Approved Profit Sharing Schemes (APSS)
- Save As You Earn schemes (SAYE)

The general intention of such schemes is to give employees a financial interest in the company in which they work by acquiring shares in the company.

It should be noted that it is the gain or benefit arising to an employee on the **acquisition of shares** which gives rise to income tax, USC and PRSI liabilities for employees. Share based remuneration does not give rise to an employer PRSI liability.

Any gain arising for an individual on the **disposal of shares** is within the remit of Capital Gains Tax. It is not proposed to discuss Capital Gains Tax issues arising on the disposal of shares in this chapter other than to highlight the difference between the disposal of shares and the disposal of shares granted under the Key Employee Engagement Program which is covered later in the manual.

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Where a share award is settled by way of a monetary payment (i.e. the employee receives a monetary payment as opposed to shares), such monetary payments give rise to an employer PRSI liability in addition to income tax, USC and employee PRSI. Examples of such awards include phantom shares, Stock Appreciation Rights (SARs) and cash-settled restricted stock units (RSUs).

2. Share Awards¹

Share awards are within the scope of the PAYE system and are treated in the same way as other benefits or perquisites. Where shares in a company (or a company which controls that company) are given to an employee free of charge or at a discounted price, the benefit accruing to the employee is a taxable BIK (i.e. the employee is taxed on the difference between the market value of the shares awarded and amount paid by the employee for the shares, if any amount is paid by the employee). The value of the benefit is to be treated as notional pay at the time the shares are given to employees and is liable to Income Tax, employee PRSI (EE PRSI) and USC, but it is not liable to employer PRSI.

Example 1

Denis receives an award of 5,000 shares from his employer. The shares are valued at €2.00 per share. What are the BIK implications for Denis?

Solution 1

<i>Market value of share award</i>	$5,000 \times €2.00 =$	$€10,000$
<i>Less: employee contribution</i>		<u>nil</u>
<i>Value of BIK</i>		$€10,000$

Denis is liable to pay Income Tax, EE PRSI and USC on the BIK of €10,000. There is no employer PRSI liability.

2.1 Employee Share Purchase Plan

An Employee Share Purchase Plan (ESPP) enables the employees of the company to purchase shares in the company or its parent company at a discount, through deductions from the employee's net pay. The discount allowed is normally 15% of the market value of the shares on either the first or last day of the offer period, whichever is the lower. The offer period is normally 6 months.

Employees generally decide how much they want to invest in the plan subject to any maximum limit (e.g. a percentage of salary) that may be set by the employer. The employee contributes the same amount each month for the 6 month period, which is retained by the company, usually in a non-interest bearing account. At the end of the 6 months, the company uses the contributions to purchase shares on behalf of the employees.

A taxable BIK will arise on the difference between the market value of the shares when the shares are purchased on behalf of the employee, and the amount paid by the employee for those shares. In most cases, the BIK charge is taxable through payroll. The value of the benefit is to be treated as notional pay at the time the shares are given to employees and is liable to Income Tax, employee PRSI (EE PRSI) and USC, but it is not liable to employer PRSI.

¹ Taxes Consolidation Act 1997, Section 112

In limited cases, where an ESPP is structured in the form of a share option scheme, the tax liability is payable by the employee directly to Revenue on a Form RTS01 as outlined below in Section 4.

Example 2

Simon is employed by Multi Nat Co which operates an ESPP for its employees. Simon earns a salary of €100,000 per year. He is allowed to contribute 12% of his salary to the ESPP. Simon contributed €12,000 to the ESPP from January to June as a net deduction from his pay (€2,000 per month). The company share price on 1st January was €44 and the share price on 30th June was €48 when the shares were purchased on behalf of Simon. What are the BIK implications for Simon?

Solution 2

Lower value of shares (at beginning or end of 6 months)	€44.00
15% discount applied	<u>€6.60</u>
Amount paid by Simon for each share	€37.40
Number of share acquired by Simon (€12,000 / €37.40)*	320
Market value per share at date of purchase	€48.00
Less Amount paid by employee per share	<u>€37.40</u>
Difference	€10.60
Amount liable to BIK (€10.60 x 320 shares)	€3,392

*Note: Simon has a balance of €32 (€12,000 – €11,968 (€37.4 x 320 shares) which could either be refunded to Simon free of tax or used to acquire shares in the next period.

2.2 Growth Shares

A growth share is a class of ordinary share which typically has a low or zero value attached to it until a certain target is met. If the target is then met, the value of the share would increase. The target is specified by the employer and could relate to either company or employee performance.

As with share awards, if the shares are given to the employee for free or at a discounted price, it will give rise to a BIK. The value of the benefit is treated as notional pay at the time the shares are given to the employee, and is liable to Income Tax, EE PRSI and USC, but it is not liable to ER PRSI.

There is no further BIK charge if the target is subsequently achieved and the value of the shares increase.

Example 3

Sinead received an award of 5,000 growth shares from her employer. The shares are valued at €1.00 per share but would increase to €10.00 per share if the company achieves annual sales of €5 million. This target of €5 million was met at the end of the year. What are the BIK implications for Sinead?

Solution 3

Market value of shares on date of award	5,000 x €1.00 =	€5,000
Less: employee contribution		<u>nil</u>
Value of BIK (liable to Income tax, USC and EE PRSI)		€5,000

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There is no further BIK at the end of the year when the market value of the shares increases to €50,000 (5,000 x €10.00).

2.3 Valuation of shares in private companies

Where shares in a private company are not traded on a stock exchange, and do not have an open market value, the employer should make a “best estimate” of the amount of notional pay liable to Income Tax, PRSI and USC. There are a number of accepted methods for valuation including, valuation based on dividend yield, earnings, net assets, cash-flow and turnover, etc.

With regard to a Revenue Compliance Intervention, an employer should be able to show, the reason for choosing the valuation method, that all relevant information was evaluated and the detailed workings of the valuation.

3. Restricted Stock Units

A Restricted Stock Unit (RSU) is a grant (or promise) to an employee to the effect that, on completion of a vesting period, he will receive a number of shares or cash to the value of such shares. No shares or cash will pass to the employee until the vesting period has passed.

An RSU is generally evidenced by way of a certificate of such entitlement. The vesting period is the period of time between the date of grant of the shares (or of the cash value of such shares) and the date on which the vesting condition is satisfied. Vesting periods are usually satisfied by passage of time (i.e. end of a specific period from the award date), by the individual's performance, or by the achievement of corporate goals.

RSUs are treated the same as Share Awards in that a taxable BIK arises for the employee based on the difference between the market value of the shares awarded under the RSU and amount (if any) paid by the employee for the shares.

The tax liability on an RSU arises either:

- a) On the date of vesting (rather than grant date) of the RSU; or
- b) Where the shares or cash pass to the employee on a date prior to the date of vesting, on that prior date.

However, there may be a delay between the date that the shares vest and the date that they are actually delivered to the employee (the settlement date). This is known as a blocking or lock-in period.

Revenue is prepared to delay collection of tax, USC and PRSI until the date on which the shares are actually settled, provided that the settlement date is within 60 days of the vesting date. PAYE, PRSI and USC should be remitted with the payment for the month following the month in which the settlement date (or the 60th day following vesting) occurs. However, this is subject to all remittances being made by the last payment date in respect of the particular tax year (i.e. by 14th or 23rd January, as appropriate). This may mean that tax in respect of shares that vest towards the end of a tax year may have to be paid before the settlement date.

Example 4

Eoghan was granted an RSU in January 2022 which vested on 31st January 2023. However, Eoghan did not receive the shares until 15th March 2023. When does the BIK charge arise in respect of the RSU awarded to Eoghan?

Solution 4

In normal circumstances, the BIK charge would arise on the date of vesting of the shares which would be 31st January 2023. As Eoghan did not receive the shares until 15th March, the Income tax, USC and EE PRSI can be collected in the next payroll following the 15th March, assuming it occurs within 60 days of the vesting date (i.e. on or before 1st April).

Example 5

Alan was granted an RSU in December 2021 which vested on 31st December 2022. However there was a delay on him receiving the shares and he did not get them until 20th February 2023. When does the BIK charge arise in respect of the RSU awarded to Alan assuming his employer pays and files through ROS?

Solution 5

While Revenue permits the deferral of the collection of Income tax, USC and EE PRSI until the employee actually receives them, this is subject to all liabilities being collected by the 23rd January 2023, which is the latest date that collection of tax can be delayed to. In this scenario, the employer would need to amend the December Payroll Submission to record the notional value of the RSU and the corresponding liabilities. The employer would typically be required to pay these liabilities to Revenue on Alan's behalf. The employer has up to the end of February 2023 to recover these liabilities from Alan without giving rise to a taxable BIK, or the employer could withhold some of the shares to cover the liabilities arising.

In cases where shares have vested and an employee is ceasing employment with a company, PAYE, Employee PRSI and USC should be paid at the date of cessation if this occurs before the settlement date. Share based remuneration is not liable to employer PRSI. The chargeable date for tax purposes remains the date of vesting. The date of valuation for the purpose of establishing the taxable amount in respect of the shares and the foreign currency conversion date is the vesting date.

In some instances, an employee who has been granted an RSU may be entitled to amounts equivalent to the dividends accruing on the shares promised by way of the RSU. These dividend equivalents are taxable emoluments of the employee and are subject to the normal payroll deductions.

3.1 Extent of the tax charge on an RSU

RSUs are fully taxable in Ireland if they vest to the employee when he is **tax resident** in Ireland. The entire value of the RSUs is taxable even if the employee was tax resident in another jurisdiction for part of the vesting period. Where an employee qualifies for split year treatment in respect of his employment income in the year of arrival in the State, he is deemed to be resident from the date of arrival. As an RSU is a taxable emolument of an employment, it is subject to split year treatment also.

Example 6

Morten is a Norwegian national. He was temporarily assigned from Norway to Ireland at the beginning of this year and will be tax resident in Ireland this year. Morten was granted an RSU last year when he was tax resident in Norway which will vest this year. The value of the RSU is €10,000. What are the BIK implications for Morten?

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Solution 6

As Morten is tax resident in Ireland at the date of vesting, the full value of €10,000 is liable to Income Tax, EE PRSI and USC under the PAYE system at the date of vesting. There is no employer PRSI liability.

If the RSUs vest when the employee is **not tax resident** in Ireland, they are not liable to tax in Ireland, even if the employee was tax resident in Ireland for part of the vesting period. Where an employee qualifies for split year treatment in respect of his employment income in the year of departure, he is deemed to be resident up to and including his date of departure. As an RSU is a taxable emolument of an employment, it is subject to split year treatment also. Hence, where an RSU vests following an employee's departure from the State and the employer holds a PAYE Exclusion Order, it can be applied to an RSU in the same manner as it can be applied to the employee's salary or other emoluments. However, the employer is required to operate PAYE and USC in the absence of a PAYE Exclusion Order.

Example 7

Cillian is an Irish national. He was temporarily assigned from Ireland to Norway at the beginning of this year and will be tax resident in Norway this year. Cillian's employer applied for, and received, a PAYE Exclusion Order from Revenue. Cillian was granted an RSU last year when he was tax resident in Ireland which will vest this year. The value of the RSU is €10,000. What are the BIK implications for Cillian?

Solution 7

As Cillian is not tax resident in Ireland at the date of vesting, the full value of €10,000 is not taxable in Ireland. There is no obligation on his employer to operate PAYE as he holds a PAYE Exclusion Order. The likelihood is that it may be taxable in Norway.

There is an exception to the above rule in the cases of foreign employments where an employee partly performs the duties of employment in Ireland and partly outside of Ireland. In the case of individuals who:

- (a) In a tax year are resident but not domiciled in Ireland,
- (b) Have income (including RSUs) arising from a non-Irish employment,
- (c) Perform some of the duties of their employment in Ireland and some outside Ireland, and
- (d) Have RSUs vesting in that tax year.

Revenue accepts a BIK only arises in respect of the proportion of an RSU attributable to the performance of the duties of the foreign employment in the State.

3.1.1 Non Resident Directors

It is long established that a director of an Irish incorporated company, regardless of where he is tax resident, holds an Irish public office. Any form of director's income (including BIK such as an RSU), fees or salaries are taxable under the PAYE system.

Some Double Taxation Agreements may provide relief from the obligation to operate tax through the PAYE system and this will be facilitated by Revenue issuing a PAYE Exclusion Order. If there is no PAYE Exclusion Order, tax and USC should be deducted from the RSU. In the absence of either a Portable Document A1 or a Certificate of Coverage, employee PRSI should also be deducted from the RSU.

3.2 Double Taxation Relief in Payroll

Some employees may, in addition to having a liability under the PAYE system in Ireland, also have a liability to income tax in a foreign country on an RSU or a portion of the RSU. For example, where an employee exercises his duties abroad for a period of time but does not break his tax residency in Ireland. If an employee remains tax resident in Ireland, Revenue will not issue a PAYE Exclusion Order. The employee may also be liable to foreign payroll taxes as the employment is exercised in that other country.

Where this arises, and a Double Taxation Agreement (DTA) is in place with the other country, the employee may be entitled to a credit in relation to any amount subject to double taxation. Where the employee is entitled to relief for foreign income tax, Revenue permits the granting of relief during the tax year rather than through a tax return at year end. To facilitate the granting of the relief in real-time, the following measures apply to RSUs that are taxed through the PAYE system and are subject to a foreign income tax.

Real-time relief can be applied where the following conditions are met:

- An RSU, or a proportion of an RSU, is liable to income tax under the PAYE system and is also liable to a foreign income tax in a State with which there is a DTA.
- The payroll operator is satisfied that foreign income tax applies and has established the effective tax rates on the doubly taxed amount.
- The payroll operator has confirmed with the employee that he is entitled to relief for foreign income tax and that he will file a tax return after the end of the tax year.
- The company will provide information to Revenue immediately after the end of the tax year i.e. before 31st March.

The credit is calculated as follows:

1. Estimate the Irish effective rate of income tax by dividing the total tax and USC by the gross income of the employee.

(Income tax + USC) / Gross pay

2. Estimate the foreign effective rate of tax by dividing the non-refundable foreign tax payable on the RSU subject to foreign income tax by the amount of the RSU subject to foreign income tax.
3. The credit is calculated by multiplying the amount of the RSU subject to foreign tax by the lower of the effective rates as calculated in 1 & 2 above.

The payroll operator may grant the credit by increasing the employee's tax credits as stated on the latest RPN by the amount of the credit due in the pay period in which the RSU is taxed and each subsequent pay period for the remainder of the year.

Example 8

Paul is single and earns €1,000 per week (€52,000 per year). His Irish employer assigned him to Poland for 30 weeks. During this time an RSU vested and shares valued at €5,000 were awarded to Paul. Paul paid €1,850 in non-refundable Polish payroll taxes.

Calculate the real-time effective tax credit due to Paul.

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Solution 8

Step 1: Estimate Irish effective rate of tax

Total income	$\text{€}52,000 + \text{€}5,000 =$	$\text{€}57,000$
Single person SRCOP		$\text{€}40,000$
Gross tax:	$\text{€}40,000 @ 20\% =$	$\text{€}8,000$
	$\text{€}17,000 @ 40\% =$	<u>$\text{€}6,800$</u>
		$\text{€}14,800$
Less tax credits:		
	Single Person	$\text{€}1,775$
	PAYE	<u>$\text{€}1,775$</u>
Total Irish tax liability		<u>$\text{€}3,550$</u>
		$\text{€}11,250$
USC		
	First	$\text{€}12,012 @ 0.5\% =$
	Next	$\text{€}10,908 @ 2\% =$
	Balance	$\text{€}34,080 @ 4.5\% =$
		<u>$\text{€}1,533.60$</u>
		$\text{€}1,811.82$

$$\text{Irish effective rate: } (\text{€}11,250 + \text{€}1,811.82) / \text{€}57,000 \times 100 = 22.91\%$$

Step 2: Estimate foreign effective rate of tax

$$\text{Foreign effective rate: } (\text{€}1,850 / \text{€}5,000) \times 100 = 37\%$$

$$\text{Step 3: Credit to be granted at lower effective rate: } \text{€}5,000 \times 22.91\% = \text{€}1,145.50$$

In this example, the payroll operator should increase Paul's annual tax credit of €3,550 as stated on the RPN by €1,145.50, giving rise to an amount of €4,695.50 which should be applied in that pay period and subsequent pay periods until the end of the tax year. **Note:** This employee's payslip should be reviewed each pay period to ensure real-time relief is granted, as any new RPN for Paul would overwrite the credit calculated by the payroll administrator.

The granting of real-time relief through payroll is subject to the following conditions:

- Evidence of the non-refundable foreign tax deducted from the employee at source should be retained,
- Claims for the relief must be verified at the year-end by the individual submitting a tax return by 31st October of the following year, and
- The employer must provide the relevant information to Revenue by 31st March of the following year.

In the event that the above conditions are not complied with, Revenue will make an assessment of the full taxes due, including interest and withdraw the facility from the employer on any similar RSUs which may arise in the future.

4. Share Options²

A share option is a right that an employer grants to an employee to acquire shares in the company. The option may allow the employee to acquire the shares at no cost to the employee (a nil option) or at a pre-determined price set by the employer (the option price). Under a share option scheme, the employer generally predetermines the:

² Taxes Consolidation Act 1997, Section 128

- number of shares the employee can acquire,
- option price (if any), and
- exercise period (the period during which the employee may exercise his option).

Shares purchased through a share option scheme are purchased from an employee's net take home pay. The benefit that the employee may get from exercising a share option is that the option price for buying the shares is less than the market value of the share, and assuming the company is performing well, the market value of the shares may continue to increase. The difference between the option price and the market value at date the shares are acquired represents a gain for the employee.

This gain is liable to Income tax, EE PRSI and USC which are payable by the employee directly to the Collector General using a Form RTSO1 (*see copy at the end of this chapter*) within 30 days of exercising the option. The gain is not liable to employer PRSI.

Employees are obliged to pay income tax 'relevant tax on share options' (RTSO) at the higher rate (40%) in force during the tax year, unless advance approval is obtained from Revenue to pay tax at the standard rate.

Employees are obliged to pay USC at the highest rate in force during the tax year. Generally this will be the rate of 8% as gains arising on the exercise of a share option are considered to be relevant emoluments from an employment and therefore not subject to the 3% USC surcharge. However, where the individual's income for USC purposes does not exceed €60,000 and they are either a medical card holder or aged 70 or over, 2% USC can be paid on the Form RTSO1.

EE PRSI is payable by an individual at the appropriate rate which will primarily be 4% under PRSI Class A.

Liabilities can be paid online via ROS or myAccount using a debit card, credit card or by Single Debit Instruction; or by cheque. The interest rate of 0.0219% (per day or part of a day) applies to late payments. Revenue can apply a penalty of €3,000 where a taxpayer fails to submit a Form RTSO1.

Additionally, an employee who exercises a share option is a chargeable person and is obliged to file a Form 11 self-assessment income tax return for that tax year.

Example 9

Frank exercised a share option in August to buy 3,000 shares in his employer's company. The option price of the shares was €7.50 per share and the market value was €8.50 per share when exercised. Frank is 40 years of age and has no medical card. What are the implications for Frank?

Solution 9

Market value per share at date of exercise	€8.50
Option price per share	<u>€7.50</u>
Benefit to employee per share	€1.00
Taxable value of Share Option	$3,000 \times €1.00 =$
Income Tax (RTSO) @ 40%	€3,000 @ 40% =
USC @ 8%	€3,000 @ 8% =

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EE PRSI @ 4%	€3,000 @ 4% =	€120
Total Liabilities		€1,560

Frank should submit an RTSOI Form with a payment for the combined amount of €1,560 directly to the Collector General within 30 days of exercising the option. There is no employer PRSI liability.

Where a share option is capable of being exercised more than 7 years after being granted (referred to as a long option), Income tax, USC and PRSI liabilities will arise at the time the option is granted where the option price is less than the market value of the share. When a long option is subsequently exercised (at least 7 years later), Income tax, USC and PRSI liabilities will arise again where the market value of the share at this date is greater than the option price. When calculating the Income tax, USC and PRSI liabilities arising at the date of exercise of a long option, a credit will be allowed for the previous tax, USC and EE PRSI liabilities which were paid at the date the share option was granted.

5. Approved Profit Sharing Scheme³

An APSS is a Revenue approved profit sharing scheme which permits an employer to allocate shares to employees free of tax, subject to certain conditions being met.

The acquisition of the shares in an APSS scheme is funded by the employer and in some cases, by the employee also. Discretionary bonuses which are sacrificed by an employee are deemed to be an employer contribution. An APSS may also allow an employee to sacrifice up to 7.5% of his basic salary in return for shares in the scheme. However, the option to sacrifice part of basic salary is only permitted in any year where the employer contributes to the scheme.

These funds are paid to an independent trust which in turn purchases the shares for allocation to the employees. The Revenue approved salary sacrifice nature of the scheme results in the employee acquiring the shares from their gross pay (i.e. before calculation of Income tax, PRSI (EE and ER) and USC), as opposed to their net take home pay.

The maximum value of shares which can be appropriated to an employee or director in any tax year is €12,700, whether this is via employer funding or salary sacrifice.

The value of any shares appropriated to an employee from an APSS is exempt from Income tax, but is liable to EE PRSI and USC which arises at the date the shares are appropriated to the employee. The value of shares appropriated from an APSS is not liable to ER PRSI. The chargeable value is the initial market value (IMV) of the shares on that date. However, where employers and employees chose to do so, they may deduct and pay, USC and EE PRSI when the salary is sacrificed. Shares cannot be appropriated in advance of salary sacrificed in order to fund the purchase of those shares. The EE PRSI and USC liabilities should not be taken into account when calculating the annual limit of €12,700.

Participation in the scheme must be open to all employees and full-time directors (i.e. a director who works for the company on a full-time basis), who have been an employee or director during the qualifying period, which cannot exceed 3 years. Participation in the scheme may be extended to part-time directors or employees who have worked for less than the qualifying period.

³ Taxes Consolidation Act 1997, Part 17 and Schedule 11

Shares must be held by the trust for a period of retention which is generally 2 years from the date they were allocated. However, in order to qualify for the income tax relief associated with an APSS, the shares must be held in trust until the release date (3 years from the date they were allocated). Where the shares are disposed prior to the release date, the individual is liable to Income tax on the value of the shares at the date they were allocated or, if less, the amount of the sale proceeds. However, where an employee ceases to be employed prior to the release date due to injury, disability, redundancy, or reaching pension age (currently 66), the shares may be sold immediately in which case 50% of the original value of the shares (or the sale proceeds if lower) will be liable to Income tax.

Where Income tax arises on the disposal of the shares before the release date, it is collected by Revenue directly from the individual based on the information submitted by the scheme trustees on a Form ESS1. USC and Employee PRSI are not chargeable on the disposal as they were already charged and collected by the employer on the full market value of the shares when they were originally appropriated to the employee. Employer PRSI is not chargeable on the disposal.

The period of retention comes to an end immediately when an employee dies, even if the shares have been held for less than 2 years. An income tax liability will not arise for the personal representatives of the employee on the disposal or transfer of the shares.

Example 10

Gerard is employed and earns €3,000 a month. He is a member of his employer's APSS. Shares to the value of €5,000 were appropriated to Gerard in December. State Gerard's pay for Income tax, PRSI (both employee and employer) and USC purposes for December.

Solution 10

<i>December salary (pay for Income tax and employer PRSI purposes)</i>	<i>€3,000</i>
<i>Add value of shares appropriated from APSS</i>	<i>€5,000</i>
<i>Pay for employee PRSI and USC purposes</i>	<i>€8,000</i>

6. Employee Share Ownership Trusts⁴

What is known as an Employee Share Ownership Trust (ESOT) is generally a combination of an ESOT (a trust which is set up and funded by the company to buy shares for the future benefit of employees) and an APSS (which is used to appropriate the shares to employees in a tax efficient manner). Although it is open to any company to set up an ESOT, they were primarily used by State companies which were being privatised. No charge to tax arises for the employees while the shares are held in trust.

Shares can be transferred from the ESOT to the APSS which in turn can be appropriated to employees in a tax free manner subject to a maximum value of €12,700 per year. As with other APSSs, a charge to EE PRSI and USC will arise on the appropriation of shares from the APSS to employees, but it is not liable to ER PRSI.

7. Savings-Related Share Option Schemes⁵

A Save as You Earn (SAYE) scheme is the most common form of a Savings Related Share Option scheme. It is a combination of a contractual savings scheme and a Revenue approved share option scheme.

⁴ Taxes Consolidation Act 1997, Part 17 and Schedule 12

⁵ Taxes Consolidation Act 1997, Part 17 and Schedule 12A and 12B

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It is an arrangement whereby an employee enters into a contractual savings scheme to save money over a specified period of time of 3, 5 or 7 years in duration. The employee is permitted to save a minimum of €12 per month and a maximum of €500 per month. The employer deducts the savings amount from the employee's net take home pay and pays it over to an approved bank or savings institution. The savings scheme can pay a tax free interest or bonus to the employee at the end of the savings period which is capped at 2, 6 or 12.5 times the employees' monthly saving amount for 3, 5 or 7 year savings contracts respectively. The scheme must be made available to all qualifying employees or full-time directors at the same time on similar terms, who have been an employee or director during the qualifying period which cannot exceed 3 years.

The rights granted under an SAYE scheme must not be capable of being exercised before the end of the contractual savings period and not later than 6 months after the expiry of the savings period (i.e. within 6 months of the expiry of this savings period, the employee has a choice to use the savings (including any bonus or interest awarded) to purchase shares at an agreed option price (fixed at the time the employee enters into the savings scheme and cannot be less than 75% of the market value of the shares at that time the right is obtained) or to receive a refund of his savings and any bonus. However, where an employee ceases to be employed before the expiry of the savings period due to injury, disability, redundancy, or reaching the specified retirement age (which can be between 60 and pension age (currently 66)), the employee can exercise his rights within 6 months following the cessation. Where the employment ends for any other reason prior to the expiry of the savings period, the employee is not entitled to exercise their rights under the scheme, however the employee would be due a refund of his savings.

An employee will generally exercise his option to purchase shares if the option price of the shares is less than the market value of the share price or the date of exercise, thus giving rise to a gain for the employee. Any such gain is exempt from Income tax but is liable to EE PRSI and USC at the time of exercise. However, it is not liable to ER PRSI. Gains will be treated as notional pay and dealt with by employers through payroll at the time of exercise.

Where the individual exercises his option following the cessation of his employment, the former employer is not required to make such payroll deductions. The individual will be subject to USC under the self-assessment system and EE PRSI should also be accounted for by the individual directly to the PRSI Special Collections Unit. Any bonus/interest earned in respect of an employee's savings is not liable to USC or EE PRSI, even where this amount is not used to purchase shares.

Example 11

Harry was granted an option over 1,900 shares in his employer's SAYE scheme at an agreed option price of €5.70 per share. Harry has been saving €285 per month for the past 36 months, giving a total savings of €10,260. The savings scheme has awarded him a bonus of €570 (assume maximum limit of twice the monthly savings amount). The total amount which can be used to purchase shares is €10,830. The current market value per share at the time of exercise is €7.25. What are the BIK implications for Harry?

Solution 11

<i>Market value per share at date of exercise</i>	<i>€7.25</i>
<i>Option price per share</i>	<i>€5.70</i>
<i>Gain per share on exercise of option</i>	<i>€1.55</i>
<i>Number of shares covered by option</i>	<i>1,900 shares</i>
<i>Notional value of gain</i>	<i>1,900 shares x €1.55 =</i> <i>€2,945</i>

The notional value of €2,945 is liable to EE PRSI and USC which is collected through payroll. There is no Income tax or employer PRSI liability. The awarding of the €570 bonus from the savings scheme does not give rise to any liabilities.

8. Restricted Shares⁶

Shares obtained by an employee on the exercise of a share option, or under a share award scheme may be subject to a restriction where the shares cannot be disposed of for a period of time. An employer may include such a clause as a measure to retain staff and/or increase staff performance.

Revenue consider shares to be restricted if all of the following conditions are satisfied:

- a) There is a bona fide written agreement in place which prevents the employee from disposing, assigning or transferring the shares to another person for a specified period of at least 1 year,
- b) The shares cannot be disposed of during that specified period except in the following circumstances:
 - On the death of the individual, or
 - Where there is a change in control or a reorganisation of the share capital of the company in which the shares are held.
- c) The shares are held in a trust established by the employer or a secure stockbroker account. The trust must be established in the State or an EEA State and the trustees must be resident in the State or an EEA State.

Revenue acknowledge that this restriction may reduce the value of the benefit or award received and as such allow for a discount to be applied to the value of the shares depending on the number of years the employee is restricted from disposing of them, as follows:

Number of years restriction	Rate of Discount
1 year	10%
2 years	20%
3 years	30%
4 years	40%
5 years	50%
More than 5 years	60%

It is this reduced amount which is subject to Income tax, EE PRSI and USC at the time the shares are awarded to the employee or the employee exercises such a share option. Where restricted shares are obtained by way of a share award, the liabilities are collected under the PAYE system. If the restricted shares are acquired through a share option scheme, Income tax, EE PRSI and USC are payable on the RTSO1. There is no employer PRSI liability.

To qualify for the discount, the restricted shares must be shares in the company in which the individual is employed or a parent company and during the period of restriction the shares must be held in a trust established by the employer.

In the event of the restriction being removed or the shares being disposed of before the restriction period expires, the liabilities must be recalculated taking account of the actual period of restriction.

⁶ Taxes Consolidation Act 1997, Section 128D

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Example 12

Liam received an award of 5,000 shares from his employer free of charge. The shares are valued at €5.00 per share. Liam is prohibited from selling the shares for 5 years and 3 months. What are the BIK implications for Liam?

Solution 12

Market value of share award	$5,000 \times €5.00 =$	€25,000
Less: employee contribution		<u>nil</u>
Gain to employee		€25,000
Less discount due to restriction (60%)	$€25,000 \times 60\% =$	<u>€15,000</u>
Notional value of BIK		€10,000

Liam is liable to pay Income Tax, EE PRSI and USC through payroll on the BIK of €10,000. There is no employer PRSI liability.

9. Forfeitable Shares

Income Tax, EE PRSI and USC liabilities will arise at the time an employee acquires forfeitable shares. However, they are not liable to ER PRSI. A forfeitable share is where a written contract exists outlining that shares may be forfeited where certain conditions are not fulfilled (e.g. an employee leaving his employment before an agreed period of time or where certain targets are not met by the company).

The employee is essentially reimbursed the cost of the shares when they are forfeited. As the employee would have previously paid income tax, EE PRSI and USC on the shares when they were acquired, he is entitled to seek a refund from Revenue and the DSP. Refunds claims are restricted to the previous 4 complete tax years from the date the shares are forfeited.

Example 13

Rob received an award of 5,000 shares from his employer for €1 each subject to the condition that he remains in his employment for the next 3 years. The shares are valued at €4.00 per share.

- What are the BIK implications for Rob?
- Assuming Rob left his employment after 2 years at which stage the shares are returned to the employer, what effect would this have?

Solution 13(a)

Market value of share award	$5,000 \times €4.00 =$	€20,000
Less: employee contribution	$5,000 \times €1.00 =$	<u>€5,000</u>
Gain to employee		€15,000

Rob is liable to pay Income Tax, EE PRSI and USC on the notional value of €15,000 as follows:

Income Tax	$€15,000 @ 40\% =$	€6,000
EE PRSI	$€15,000 @ 4\% =$	€600
USC	$€15,000 @ 8\% =$	<u>€1,200</u>
Total Liabilities		€7,800

Solution 13(b)

When the shares are forfeited after 2 years when Rob leaves his employment, subject to the terms of the share award contract, he will most likely be refunded the €5,000 he gave to the employer.

In addition, he has 4 years to seek a refund of the tax, USC and PRSI liabilities as calculated above.

10. Deduction of Tax in respect of Notional Pay

An employer is required to deduct Income tax, EE PRSI and USC in respect of a notional payment in the form of share based remuneration on:

- a) The day the notional payment is made (e.g. date of share award or date of vesting), or
- b) If there is no actual payment of wages made to the employee on that day, the earlier of:
 - (i) The employee's next pay day, or
 - (ii) 31st December in the year in which the notional payment is made.

Where the precise value of the shares is known, employers must deduct Tax, EE PRSI and USC in accordance with the rules outlined above.

If the precise value of the shares is not known (e.g. where the shares have vested in a different country and/or in a different currency), the employer should include the best estimate of the value of the shares in the current Payroll Submission and any adjustments can be made in the next Payroll Submission.

In relation to shares vesting on 31st December, consideration should be given to whether the shares have vested in Ireland on the 31st December. If the closing price is not known at close of business in Ireland on 31st December, the shares can be considered to have vested on the 1st January and taxed accordingly in the January Payroll Submission. If the closing price is known on the 31st December then the shares will be regarded as vesting on that date and should be taxed accordingly in the Payroll Submission for December.

Where the employee has insufficient funds to pay the liabilities, the employer is required to pay the full liabilities to Revenue in the appropriate Monthly Return and either:

- Recover the shortfall from the employee (**Note:** where the shortfall is not recovered by 28th February following the end of the tax year, the outstanding amount on that date will give rise to a further taxable BIK), or
- Withhold part of the share award to offset against the liabilities arising. This is covered in more detail later.

11. Summary of Income Tax, PRSI and USC treatment

	APSS	SAYE	Share awards (incl. RSU)	Share Option
Revenue Approved	Yes	Yes	No	N/A
Benefit to employee	Deducted from gross pay	Gain on exercise of option	Free or discounted shares	Gain on exercise of option
Revenue Limit	€12,700 per year	€500 per month	None	None
Time of charge	Appropriation of shares to employee	Exercise of Option	Earlier of date of vesting or date	Exercise of Option*

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			shares pass to employee	
Income Tax	Not liable	Not liable	Yes – Payroll	Yes – RTSO 1 Form - within 30 days of exercise
Income tax rate	N/A	N/A	Marginal rate	Higher rate unless approval obtained for standard rate
USC	Yes – Payroll	Yes – Payroll, or self-assessment where employee has ceased	Yes – Payroll	Yes – RTSO 1 Form - within 30 days of exercise
USC rate	Marginal rate	Marginal rate	Marginal rate	Marginal rate
EE PRSI	Yes – Payroll	Yes – Payroll, or self-assessment where employee has ceased	Yes – Payroll	Yes – RTSO 1 Form – within 30 days of exercise
ER PRSI	Not liable	Not liable	Not liable	Not liable

*Where a share option is capable of being exercised more than 7 years after being granted, a liability will arise at the time it is granted and the liability will subsequently be recalculated at the time it is exercised.

12. Withholding Shares to meet Tax and USC Liabilities⁷

Where an employee receives share based remuneration which is liable to Income Tax and USC and he has insufficient pay to meet the liabilities, the employer is entitled to withhold enough shares in order to meet the liabilities where the employee does not otherwise make good the amount due to the employer. The employee will be liable to pay Income Tax, EE PRSI and USC as appropriate on the overall value of the shares, even though the employee has not actually received all of the shares.

Example 14

Zack received an award of 20,000 shares from his employer which were valued at €1 each. The liabilities arising on this award (assuming marginal rates) are as follows:

<i>Notional payment</i>	$20,000 \times €1.00 =$	$€20,000$
<i>Income tax</i>	$€20,000 @ 40\% =$	$€8,000$
<i>USC</i>	$€20,000 @ 8\% =$	$€1,600$
<i>PRSI</i>	$€20,000 @ 4\% =$	$€800$
<i>Total liabilities</i>		$€10,400$

Assuming the employee has insufficient funds to meet this liability of €10,400, the employer is still required to pay the liability to Revenue on his Monthly Return, and the employer could arrange to recover the shortfall from the employee in subsequent pay periods. This should be recovered before the 28th February of the following tax year to avoid a further BIK arising.

⁷ Taxes Consolidation Act 1997, Section 985A and 531AO as amended by Finance Act 2012

However, the employer is permitted to withhold enough shares to meet the Income tax and USC liabilities in the event the employee has insufficient funds to pay these liabilities. The employee is deemed to have sold a number of shares back to the employer in order to fund the Income tax and USC.

The Social Welfare legislation does not provide for a similar withholding provision to meet the employee PRSI liability but it is generally acceptable for the employer to withhold sufficient shares to meet the employee PRSI liability also.

In the above example, the employee is taxed on €20,000 (20,000 shares) and assuming the employer withholds 10,400 shares to meet the total liability (€10,400), the employee will then receive 9,600 shares.

To avoid any doubt on this matter, it is advisable that the employer include this withholding provision as part of their share based remuneration policy.

13. Key Employee Engagement Programme

All of the share schemes described above have long been used by publicly quoted companies (PLCs) as an alternative way of motivating and rewarding employees by giving them the option of having a financial stake in the company. Share schemes were generally not used by smaller unquoted (Ltd) companies for a number of reasons. As the shares in these companies are not publicly traded, it can be difficult to obtain a market value for the shares. In many cases the only real option was to sell the shares back to the company.

A new Key Employee Engagement Programme⁸ (KEEP) was introduced in 2018 to support unquoted companies in competing with PLCs by giving tax relief to employees who avail of KEEP share options.

Share based remuneration is generally liable to two separate tax charges as outlined previously – a Benefit in Kind charge on the acquisition of shares (where the shares are acquired for less than market value) and a Capital Gains Tax (CGT) charge on any gain arising on the disposal of the shares.

With a qualify KEEP share option, employees will not incur a BIK charge on the acquisition of the shares on the exercise of a qualifying KEEP share option. However, any gain arising on the disposal (i.e. the difference between the sale proceeds and the price paid for the shares by the employee) of KEEP shares will be subject to Capital Gains Tax.

A **qualifying KEEP share option** means a right granted to an employee or director of a qualifying company to purchase a predetermined number of shares in the qualifying company (or qualifying holding company), at a predetermined price, by reason of the individual's employment or office in the qualifying company, where:

- The shares are new ordinary fully paid up shares,
- The option price at date of grant is not less than the market value of the same class of shares at that time,
- There is a written contract or agreement in place specifying:

⁸ Taxes Consolidation Act 1997, Section 128F. Inserted by Finance Act 2017.

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- (i) the number and description of the shares which may be acquired by the exercise of the share option,
- (ii) the option price, and
- (iii) the period during which the share options may be exercised,
- The total market value of all shares, in respect of which qualifying share options have been granted in the qualifying company to an employee or director does not exceed:
 - (i) €100,000 in any year of assessment,
 - (ii) €300,000 in all years of assessment, or
 - (iii) The amount of annual emoluments of the qualifying individual in the year of assessment in which the qualifying share option is granted,
- The shares are in a qualifying company or, in the case of a qualifying group, in the qualifying holding company, and
- The share option must be held by the employee for a minimum period of 1 year from date of grant before it can be exercised, and it must be exercised within 10 years from the date of grant of that option.

Some of the conditions which apply to a **qualifying company** (or a qualifying holding company in a qualifying group) are as follows. The company:

- Must be resident in Ireland and must not be quoted on the stock exchange (except the Enterprise Securities Market),
- Must have fewer than 250 employees,
- Must have an annual turnover that does not exceed €50 million and a balance sheet which does not exceed €43 million,
- In relation to a holding company, it cannot be controlled by another company, it cannot carry on a trade, and its business consists of holding shares in a qualifying subsidiary or subsidiaries.
- The total market value of the issued but unexercised qualifying share options of the company does not exceed €3 million. It is proposed that this limit will increase to €6 million subject to a ministerial order.
- Must not be carrying on excluded activities.*

***Excluded activities** are:

- Adventures or concerns in the nature of trade (i.e. once-off or speculative transactions),
- Dealing in commodities or futures in shares, securities or other financial assets,
- Financial activities,
- Professional services companies (i.e. those services which are liable to Professional Services Withholding Tax such as medical, dental, pharmaceutical, optical, aural, veterinary, architectural, engineering, quantity surveying, accountancy, auditing or finance, and services of financial, economic, marketing, advertising or other consultancies, legal or geological services),
- Dealing in or developing land,
- Building and construction,
- Forestry, and
- Operations carried out in the coal industry or in the steel and shipbuilding sectors.

A **qualifying individual** is:

- A full-time employee or director who works at least 20 hours per week for a qualifying company or devotes not less than 75% of his working time to that company,

- The employment must be capable of lasting for at least 12 months after the options are granted, and
- The employee or director must not hold directly or indirectly more than 15% of the share capital of the company.

KEEP is available in respect of qualifying share options granted to employees between 1st January 2018 and 31st December 2023. **Finance Act 2022** provides for the extension of KEEP until 31st December 2025, subject to a commencement order.⁹

Finance Act 2022 introduces a new provision to allow CGT treatment to apply where a company buys back the KEEP shares, subject to certain conditions being satisfied. The commencement of this provision is subject to a commencement order.

Example 15

An employee is granted an option in June 2022 to purchase 15,000 shares at a price of €1 per share (market value at date of grant). The employee exercises the option in June 2024 when the market value of the shares is €3 per share. The employee sells the shares in June 2026 when the market value is €5 per share.

The following table shows the tax implications for the employee for standard share options and for KEEP options.

Date of Grant – June 2022	Standard Share Options No Implications	KEEP Options No Implications
Date of Exercise – June 2024	€	€
Market Value of Shares (15,000 x €3)	45,000	45,000
Less Option Price (15,000 x €1)	<u>15,000</u>	<u>15,000</u>
Gain on Exercise	30,000	30,000
Income tax @ 40%	12,000	0.00
USC @ 8%	2,400	0.00
PRSI @ 4%	<u>1,200</u>	<u>0.00</u>
Total liabilities due within 30 days	15,600	0.00
Date of Sale – June 2026		
Sale Proceeds (15,000 x €5)	75,000	75,000
Original cost of shares (15,000 x €1)	(15,000)	(15,000)
Amount subject to BIK (gain on exercise)	<u>(30,000)</u>	<u>(0.00)</u>
Gain for CGT purposes	30,000	60,000
Less CGT Annual Exemption	<u>1,270</u>	<u>1,270</u>
Taxable amount	28,730	58,730
CGT @ 33%	<u>9,481</u>	<u>19,381</u>
Summary		
Growth in shares (Proceeds – Cost)	60,000	60,000
Total tax payable as above	<u>(25,081)</u>	<u>(19,381)</u>
After tax gain to employee	34,919	40,619
Additional benefit of KEEP Option		5,700

⁹ Finance Act 2022 (Section 16)

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14. Returns by Employers or Trustees Payroll Submissions

The monetary value of any share award in the employer company or a company that controls the employer company (including RSUs, ESPPs structured in the form of a share award, forfeitable shares, restricted shares, APSS and SAYE share awards, etc.) should be included in the “Gross Pay” and “Share Based Remuneration” fields on the Payroll Submission. In addition:

- The monetary value of share awards which are taxable through payroll should also be recorded in the pay for Income tax, pay for USC and pay for employee PRSI fields.
- The monetary value of APSS and SAYE share awards which are exempt from tax should also be recorded in the pay for USC and pay for employee PRSI fields.

The monetary value of a share award should not be included in the pay for employer PRSI field as it is not liable to employer PRSI.

Cash-settled awards (i.e. where an employee receives a monetary payment in lieu of shares) should not be included as share-based remuneration on the payroll submission.

Share Options (including any ESPP which is structured in the form of a share option) and KEEPs should not be included on a Payroll Submission as they are returned separately to Revenue.

Form ESA

Revenue developed an electronic Return called a Form ESA (Employer’s Share Awards Return) for reporting a certain share awards. The electronic Form ESA is in a spreadsheet format which can be converted into an “XML” file and uploaded via ROS.

The share awards to be returned on the form include:

- Restricted stock units (RSU),
- Employee Share Purchase Plans (ESPP) where ESPP is structured as a share award,
- Restricted shares, Convertible shares, Forfeitable shares, Growth shares,
- Discounted shares, and
- Any other award with cash-equivalent of shares.

The Form ESA must be filed by 31st March of the following year. A copy of the ESA is available at: <https://www.revenue.ie/en/employing-people/documents/form-esa.xls>

Form RSS1

A Form RSS1 is a return by an employer of Share Options and other rights and securities granted by an employer to an employee in a tax year. It also includes details of the exercise, release or assignment of these options and other rights. It does not include share awards (see above) or shares issued under a SAYE or APSS scheme. However, where an ESPP is structured as a share option scheme, they should be included in the Form RSS1 as opposed to the Form ESA.

This is a compulsory return which must be submitted by the employer on or before 31st March in respect of share options and awards issued in the previous income tax year. RSS1 returns must be made in electronic format. The electronic RSS1 is in a spreadsheet format which can be converted into an “XML” file and uploaded via ROS. A copy of the electronic RSS1 is available at: <http://www.revenue.ie/en/employing-people/documents/form-rss1.xls>

Form ESS1

A Form ESS1 is an annual online return by the trustees of an APSS which must be submitted to Revenue by 31st March of the following year. The Form ESS1 gives details of money received from each employee to acquire shares under the scheme and the value of shares appropriated to an employee, along with other information in relation to the trust.

Details of the reporting obligations are available in Revenue's Share Scheme Manual <https://www.revenue.ie/en/tax-professionals/tdm/share-schemes/Chapter-13.pdf>.

Form SRSO1

A Form SRSO1 is an annual return by the trustees of a SAYE scheme which must be submitted to Revenue by 31st March of the following tax year. The Form SRSO1 gives details of options granted to each employee to acquire shares under the scheme and the number of options exercised during that year to include the option price and the market value per share.

KEEP1 Return

A KEEP1 Return must be submitted to Revenue by a company for any year in which it grants a qualifying KEEP option to an employee, or any year in which a KEEP option is exercised, transferred or released. This return must be filed by 31st March in the following year.

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**Form
RTSO1**

**Relevant Tax on a Share Option
Universal Social Charge (USC)
Pay-Related Social Insurance (PRSI)**



NAME:

ADDRESS:

Payment of Relevant Tax on Share Option, USC and PRSI

This form is to be used for the purpose of making a Relevant Tax on a Share Option Return and associated Universal Social Charge and PRSI payment to the Collector-General. The completed form should be forwarded, with the payment due, to the Collector-General at the address below. Relevant Tax on a Share Option must be paid not later than **30 days** after the date on which the share option is exercised.

METHODS OF PAYMENT

You can make a payment using one of the following:

1. Cheque

Cheque payments should be sent, with the completed payslip below to the Collector-General.
All cheques must be made payable to the Collector-General.

2. Revenue Online Service (ROS)

For details on how to make payments using the Revenue Online Service visit the Revenue website at www.revenue.ie or phone 01 738 3699.

3. myAccount

Registering for myAccount allows you to make payments online. You can register for myAccount on the "Register for myAccount" link on www.revenue.ie. You will need your PPSN and a password to make payment.

You can use myAccount to make an RTSO payment if you are currently registered for RTSO or were previously registered for RTSO, using:

- a debit card or a credit card.
- a once off debit - a 'Single Debit Instruction' - using a bank account.

IMPORTANCE OF PROMPT PAYMENTS

- Ensure that you allow sufficient time - at least three working days - for your payment to reach the Collector-General by the due date.
- Late payment of tax carries an interest charge.
- Failure to pay a tax liability, or to pay on time, can result in enforced collection through the Sheriff, Court proceedings or a Notice of Attachment.
- Enforcement carries costs, additional to any interest charged.

Enquiries

MyEnquiries can be accessed through ROS or myAccount and allows you to securely send and receive correspondence to and from Revenue.
Alternatively you can phone 01 738 3663 for enquiries regarding payments.

RETURN ADDRESS

Please return this completed form, regardless of your payment method, to the Collector-General at the following address:

Collector-General, Sarsfield House, Francis Street, Limerick, V94 R972

RTSO, USC and PRSI

PPSN:

The amounts entered are a full declaration of my gain on the exercise of a share option on the date indicated and my liability to RTSO, USC and employee PRSI in respect of that gain.

Date on which the share option was exercised:

Signature:

D D M M Y Y Y Y

Total Amount of Gain
made on Share Option:

.00

Whole euro only - do not enter cent

Total Liability:

.00

Whole euro only - do not enter cent

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Expenses and Tax Free Payments

- 1. Tax Relief for Expenses Incurred in Employment**
 - 2. Reimbursement of Expenses**
 - 3. Round Sum Allowances**
 - 4. Motor Travel and Subsistence Rates**
 - 5. Tax relief for unreimbursed car expenses incurred by an employee**
 - 6. Removal and Relocation Expenses**
 - 7. Remote Working**
 - 8. Expenses of Members of State/State Sponsored Committees**
 - 9. Expenses of State Examinations Commission Examiners**
 - 10. Reportable Benefits**
-

1. Tax Relief for Expenses Incurred in Employment

Where an employee incurs an expense, which is “**wholly, exclusively and necessarily incurred in the performance of his duties**”, he is entitled to claim tax relief in respect of such expenses, if he has not been reimbursed by his employer.¹ All elements of this test must be met for an employee to claim tax relief on the expense.

Regarding the **wholly and exclusively** elements:

- The employee’s sole purpose for incurring the expense must have been for the purposes of the performance of the duties of the employment. Where a non-employment purpose is identified, then the expense is not deductible for tax purposes.

Regarding necessarily incurred in the performance of the duties:

- Necessarily means that the duties of the employment could not be performed without incurring the expense. “In the performance of the duties” means in the actual performance or carrying out of the duties of the employment. Any expenditure incurred before or after performing the duties of the employment would be ruled out, such as costs incurred by an employee in travelling to and from his normal place of work. Expenditure incurred by an employee which merely puts the employee in a position to exercise the employment would not be incurred in the performance of the duties of the employment.

Revenue issued guidance on the deductibility of typical expenses that may be incurred by an employee as follows:²

¹ Taxes Consolidation Act 1997, Section 114

² Tax and Duty Manual – Part 05-02-20 – General Rule as to Deduction of Expenses in Employment

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Laundry – normal laundry of clothing or uniforms does not meet the wholly, exclusively and necessarily in the performance of the duties of employment test. It is possible that specialist cleaning of a uniform may meet the test.

Uniforms – vocational uniforms which staff are obliged to supply and wear generally meet the criteria for deduction.

Clothing – it is unlikely that clothing outside of a distinct uniform which an employee is obliged to wear daily under their contract will meet the test. Any clothing expense outside of a uniform which an employee is obliged to wear will likely fail the duality of purpose test (i.e. the expense of the clothes was not incurred exclusively for the performance of the employment as they could also be used outside of the employment). For a uniform to qualify, the employee must bear the cost. For example, the purchase of black trousers and a white shirt for work would not be allowable.

Statutory/Regulatory Requirements – a registration fee where there is a statutory obligation to be a member of a particular body to carry out the duties of the employment (e.g. Irish Medical Council for doctors) is an allowable deduction and will likely be included in a flat-rate expense where one exists for the particular profession.

Professional Membership Fees – will not generally meet the test unless it is a statutory obligation, an indispensable condition of the terms of the employment and the employee works in those duties. If it is a requirement of the employment, it is likely the employer will cover the cost.

Purchase of a Computer – it is unlikely that an employee would be required to purchase a computer from their own resources to fulfil the duties of the employment. The wholly, exclusively and necessarily in the performance of the duties of the employment test would not be met. There is a Benefit in Kind (BIK) exemption where an employer provides computer equipment where certain conditions are met as outlined in the chapter entitled Taxation of Benefits in Kind. Under the e-working provisions (as outlined later in this chapter), an employer may also provide computer equipment without a deduction of tax.

Continuous Professional Development (CPD) – if an employee was required to pay for necessary CPD, the question would have to be asked could the employee carry out the duties of the employment without such CPD. Case law dictates that CPD does not generally meet the criteria for deduction.

Personal Protective Equipment (PPE)/Safety Equipment – it would be unusual for an employee to be expected to supply their own PPE. If such equipment was required to carry out the duties of the employment, the employer would supply the equipment, in accordance with the provisions of the Safety, Health and Welfare at Work (General Application) Regulations 2007. The equipment in question would be items such as hard hats, high vis jackets, safety boots, etc.

Tools – if an employee is required to supply his/her own tools, it would likely meet the wholly, exclusively and necessary test if those tools were used exclusively in the performance of the duties of the employment.

Trade Union Membership – does not meet the test of wholly, exclusively and necessarily in the performance of the duties of the employment.

Where applicable, tax relief can be claimed following the end of the tax year in which the expense was incurred by completing a tax return. All receipts should be retained to support the claim.

For ease of administration, where a large number of employees incur similar qualifying expenses which are not reimbursed by their employer, a flat-rate expense allowance may be claimed. The amount of the allowance is agreed between Revenue and representatives (usually trade union officials) of groups or classes of employees. Once agreed, all employees engaged in that category of employment can claim the appropriate allowance as part of their annual SRCOP and tax credits. Revenue will increase the employee's SRCOP by the amount of the expense allowance and increase his tax credits by 20% of the expense allowance. This ensures that tax relief is granted at the individual's marginal rate of tax. This was covered in detail in the chapter entitled "Personal Tax Credits and Reliefs".

Flat-rate expenses are those that are incurred in the performance of the duties of an employment and cover the cost of equipment an employee needs for work. This equipment may include tools or uniforms. It may also cover a statutory registration fee.

2. Reimbursement of Expenses

The rules regarding the payment of expenses are designed to avoid any abuses, by which employers may seek to make payments to employees free of income tax. When an employer reimburses an employee for expenses incurred which meet the conditions outlined above (i.e. wholly, exclusively and necessarily incurred in the performance of his duties), such reimbursement may be made free of tax. This clearly makes sense as the employee is only facilitating his employer and is then being reimbursed for the actual amount which he incurred on the employer's behalf. Employers, however, should obtain a receipt in respect of any such expenses being reimbursed.

It is not sufficient to say that a payment represents expenses and as such should not be subject to Income tax, PRSI and USC.

Example 1

Alan incurred a taxi fare of €24 when required to attend a client's premises for a business meeting on behalf of his employer. This is an expense wholly exclusively and necessarily in the performance of his duties and can be reimbursed tax free on production of a receipt.

3. Round Sum Allowances

Where any round sum allowance is paid to an employee, to cover expenses incurred by him, such round sum allowances are liable to income tax. Some of the more common payments of this type are:

- Car Allowance
- Fuel Allowance
- Living/rent Allowance
- Clothing Allowance
- Tea/Lunch Allowance
- Travel Allowance

Whether the allowance paid to an employee is a weekly, monthly or annual round sum, it is always subject to Income tax, PRSI and USC (and ASC for public servants).

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Example 2

Barry is paid a monthly car allowance of €300 in addition to his salary. This is a round sum allowance and is fully taxable.

Example 3

Connor is paid a €20 lunch allowance when he is required to attend his normal place of employment to work on a Saturday. This is a round sum allowance and is fully taxable.

4. Motor Travel and Subsistence Rates

4.1 Motor Travel Rates

When an employee, including a director, uses his own car, van, motorcycle or bicycle for business purposes and incurs the expense of travelling in the performance of his duties of employment, an employer may either pay him a motor travel rate, or reimburse him free of tax for the actual costs incurred, provided the employee incurs the total running costs (i.e. insurance, tax, fuel, etc.). Where the motor travel rate does not exceed the prevailing Civil Service travel rates, it can be paid free of tax. If the motor travel rate exceeds the prevailing Civil Service rates, Revenue regard the excess amount as a taxable payment.

In order to make such payments tax free to an employee, the employee must be temporarily away from his normal place of work in the performance of the duties of his employment and the travel expenses must be incurred in the actual performance of the duties.

When an employee incurs expenses (including bus, taxi or train fares) in travelling to or from his normal place of work, such expenses are not incurred in the performance of the employee's duties, but rather they are incurred by the employee to get him to the location where his duties of employment are carried out. Travel to and from an employee's normal place of work is private travel and any payment made by an employer in respect of private travel is fully taxable.

This principle applies to directors (including non-executive directors) or office holders who attend board meetings, subject to the following exceptions:

- (i) An exemption from tax applies to payments made by a non-commercial body to or on behalf of a non-executive director in respect of travel and subsistence expenses incurred by him or her in the attendance at meetings of that body. This exemption is covered later.
- (ii) Any vouched travel and subsistence expenses (e.g. flights, taxis, hotels, etc.) reimbursed to a **non-resident** non-executive director in attending board meetings of a Company are exempt from income tax, PRSI and USC, subject to the following conditions:³
 - The expenses must be vouched (receipts are required),
 - The director must not be resident in Ireland, and
 - The director must not be a full-time working director of the Company.
- (iii) Any travel and subsistence expenses up to the prevailing Civil Service rates, reimbursed to a resident non-executive director in attending board meetings of a Company are exempt from income tax, PRSI and USC where the income (excluding the amount of travel and subsistence expenses) from the directorship does not exceed €5,000 per tax year.⁴ Where

³ Taxes Consolidation Act 1997, Section 195B

⁴ Taxes Consolidation Act 1997, Section 195D

this income limit is exceeded, this exemption will not apply, in which case any expenses reimbursed will be fully taxable.

4.2 Normal Place of Work

The “normal place of work” is the place where the employee normally performs the duties of his employment. An employee’s home is not regarded as the normal place of work unless there is an objective requirement that the duties of the office or employment must be performed at home. It is not sufficient for an employee merely to carry out some of his duties at home.

Revenue consider that the office remains the normal place of work for remote workers. Tax free expenses should not be paid for travel between an employee’s home and normal place of work and tax-free subsistence cannot be paid for periods spent in the employee’s home.

Example 4

Denis is employed in an office which is located in Athlone. This is where he normally carries out his duties of employment. This will be regarded as his normal place of work.

Example 5

Enda is employed in the Galway branch of a retail chain and this is where he normally carries out the duties of his employment. The retail chain is headquartered in Cork. Galway will be regarded as his normal place of work. If Enda is required to travel to the head office in Cork, this would be a business journey.

4.2.1 Services Provided Through Intermediaries

Revenue have issued guidance on the reimbursement of expenses for individuals who provide their services through an intermediary. Typically, the intermediary used is a company with the individual being the only employee/director of that company.

Revenue do not accept that the registered address of these companies or the location at which the administration of the company is carried out constitutes a “normal place of work” for the employee of the company. Any travel from this location or back to this location is considered to be private travel and the employee cannot be reimbursed tax free for these journeys. Tax free subsistence payments may not be paid for any periods spent by the employee at this location.

In the majority of cases, Revenue considers the individual’s normal place of work to be the premises on the intermediary’s client. The fact that an intermediary undertakes a number of short-term contracts does not alter this position.

4.3 Travelling Appointments

The employer’s premises will be regarded as the normal place of work for an employee where:

- Travel is an integral part of his job (e.g. bus, lorry or van driver, etc.), or
- An employee is required to travel in the course of his job (e.g. a salesperson, repair or service engineer, etc.) - an occupation which generally involves multiple daily appointments with customers.

Revenue refers to these employees as “travelling employees” or employees whose job can be categorised as a “travelling appointment”. The reimbursement of expenses by an employer to such an employee generally only relates to subsistence, but it may include expenses of travel where the employee is required to use his own car or van for business travel.

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Example 6

Finn is employed as a sales representative by a Dublin based company. Finn lives in Sligo and has responsibility for sales in Mayo, Sligo and Donegal. Finn is required to meet customers on a daily basis. Finn's job can be classified as a travelling appointment and the location of his employer's base in Dublin is regarded as his normal place of work. If Finn is required to attend the head office in Dublin, this would not be considered to be a business journey as he is attending his normal place of work.

4.4 Business Journeys

A business journey is one in which an employee travels from one place of work to another place of work in the performance of the duties of his employment but will generally involve a temporary absence from the normal place of work. Journeys between an employee's home and place of work (and vice versa) are not considered by Revenue to be business journeys.

Where an employee is employed in the State and is obliged to travel to a foreign location to temporarily perform the duties of his employment there, both the outward and the return journey home is regarded as a business journey.

Where an employee travels to a customer or client (his temporary place of work) directly from home or returns home directly, the business journey should be calculated by reference to the lesser of the distance between:

- (i) Home and the temporary place of work, or
- (ii) His normal place of work and the temporary place of work.

Example 7

Using the information from example 6 above, when Finn leaves his home in Sligo and travels to customers in Donegal, Sligo or Mayo, the likelihood is that the shorter journey will be the journey to and from his home in Sligo to each customer, as opposed to a journey beginning and ending at his normal place of work, which is regarded as Dublin.

4.5 Reimbursement of Travel Expenses

An employer may reimburse an employee free of tax for using his own car, van, motorcycle or bicycle for business journeys in one of three ways:

- (i) Pay the employee a travel rate per kilometre, up to, but not exceeding the prevailing Civil Service travel rates,
- (ii) Pay the employee using any other schedule of rates provided they do not exceed the prevailing Civil Service travel rates, or
- (iii) Reimburse the employee for the actual costs incurred.

4.5.1 Civil Service Travel Rates

Motor Travel Rates for Cars and Vans applicable since 1st September 2022

<u>Rate per kilometre</u>	<u>Engine up to 1200cc</u>	<u>1201cc to 1500cc*</u>	<u>1501cc+</u>
First 1,500 kms	41.80 cent	43.40 cent	51.82 cent
1,501 – 5,500 kms	72.64 cent	79.18 cent	90.63 cent
5,501 – 25,000 kms	31.78 cent	31.79 cent	39.22 cent
25,001 kms and over	20.56 cent	23.85 cent	25.87 cent

Reduced Motor Travel Rates:

Engine Capacity	<u>Up to 1200cc</u>	<u>1200cc to 1500cc*</u>	<u>1501cc +</u>
Rate per km	21.23 cent	23.80 cent	25.96 cent

*These rates apply to Electric Vehicles

Reduced rates are payable to Civil Service employees who undertake a journey associated with their job but not solely related to the performance of their duties, such as:

- Attendance at confined promotion competitions,
- Attendance at approved courses of education / conferences,
- Return visits home at weekends during periods of temporary transfer.

Motor Travel Rates for Motorcycles:

<u>Rates per kilometre</u>	<u>Engine up to</u>	<u>151cc to</u>	<u>251cc to</u>	<u>601cc and over</u>
	<u>150cc</u>	<u>250cc</u>	<u>600cc</u>	
First 6,437 km	14.48 cent	20.10 cent	23.72 cent	28.59 cent
6,438 km and over	9.37 cent	13.31 cent	15.29 cent	17.60 cent

Travel Rates for Bicycles: 8 cent per kilometre

Example 8

Graham drives a 1,400cc Ford Focus. He travels 8,500km on business travel during this tax year. Calculate how much he can be paid tax free using the Civil Service rates.

Solution 8

First 1,500kms:	1,500kms @ 43.40 cent =	€651.00
1,501 – 5,500kms	4,000kms @ 79.18 cent =	€3,167.20
5,501 – 25,000kms	3,000kms @ 31.79 cent =	€953.70

€4,771.90

4.5.2 Summary of Rules for Payment of Motor Travel Rates

- Motor travel rates up to, but not exceeding the prevailing Civil Service rates, can be paid free of tax.
- Where the travel rate paid by the employer exceeds the prevailing Civil Service travel rate, the excess amount is taxable.
- Civil Service travel rates paid are dependent only on the size of the car engine. The age, cost and type of engine are irrelevant.
- Kilometres travelled are calculated on an annual calendar year basis.
- Expenses can be claimed at the rate within each rate band, as the total travel increases during the year.
- The Civil Service motor travel rate paid is deemed to cover all expenses incurred by the employee in running the car. An employer may also reimburse the employee for any toll charges incurred while on business trips free of tax. In addition, where an employee incurs expenses in parking at customer/client's premises, the parking expenses may also be reimbursed free of tax by the employer in addition to being paid a travel rate.
- If the employer pays other costs such as servicing, petrol, etc. in addition to the motor travel rate, these are taxable as BIKs, unless the employee can show that the total payments received do not exceed the actual costs, which he incurs, in the performance of his duties.

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- It is also prudent for an employer to ensure that employees using their own cars on business trips have business class insurance. An employer may reimburse any additional premium free of tax to the employee concerned.
- Motor travel rates should be claimed for travelling from a base only, usually the place of business and should not include travel to and from the normal place of work.
- Full records must be maintained by the employer in support of any business travel claims made for a period of 6 years.
- No receipts are required for motor travel claims other than the claim forms submitted by the employee.
- Travel rates paid in accordance with the Civil Service Rates are not subject to Income Tax, PRSI or USC.

4.5.3 Other Schedule of Travel Rates not exceeding Civil Service Rates

The operation of the Civil Service rates requires an employer to monitor the amount of business travel in a tax year for each employee and the size of the engine in each employee's car. To alleviate the administration and the cost to the employer, some employers will simply pay a flat rate per km regardless of the type of car driven by the employee. Once the rate payable by the employer does not exceed the prevailing Civil Service rate, it can be paid tax free.

Example 9

Harry drives a 1,400cc Ford Focus. He travels 8,500km on business travel during the year. His employer's policy is to pay all employees 30 cent per kilometre. Calculate how much he will be reimbursed for his business travel.

Solution 9

All business travel: $8,500\text{km} @ €0.30 =$ €2,550.00

As the amount paid using this schedule (30 cent per km) is unlikely to exceed the amount payable using the Civil Service travel rates, this should be acceptable to Revenue.

4.5.4 Actual Travel Costs Incurred

As an alternative to the reimbursement of business travel by way of a flat rate allowance, an employer may opt to reimburse an employee for the actual costs incurred in using his own car, van, motorcycle or bicycle for business purposes. Any reimbursement of actual costs incurred must be vouched by receipts and the employer must retain the receipts, together with details of travel, etc., for a period of 6 years after the end of the tax year to which the records refer. The reimbursement of actual costs will generally not exceed the amount which would have been payable using the Civil Service motor travel rates outlined above.

4.5.5 Emergency Travel

Generally, private travel (to and from work) cannot be reimbursed free of tax by an employer. However, Revenue allow a concession regarding the reimbursement of travel expenses (i.e. the cost of taxis or travel expenses up to the appropriate civil service travel rate) to employees who are required to attend an emergency at their normal place of work which is outside their normal working hours.

An emergency would generally encompass an unforeseen or sudden event requiring immediate attention and would have serious consequences if left unattended until the employee was due to commence his normal working hours.

This concession is subject to a maximum of 60 such emergencies per year.

An emergency does not include:

- Replacing a staff member who fails to attend work,
- Attending a routine event, or
- Assisting with increased volume of work (i.e. working overtime).

Note: where an employee attends another location, other than his normal place of work, such travel is a business journey and the employee can be reimbursed tax free up to the Civil Service travel rates for the shorter journey (i.e. either from work or home to and from the temporary location).

4.6 Subsistence Rates within the State

When an employee, including a director, performs the duties of his employment while temporarily away from his normal place of work, an employer may reimburse the subsistence expenses (meals and accommodation) incurred by the employee tax free by either:

- (i) Paying the employee a flat rate up to, but not exceeding, the prevailing Civil Service subsistence rates,
- (ii) Paying the employee using any other schedule of rates (subject to Revenue approval) providing they do not exceed the actual costs incurred by the employee, or
- (iii) Reimbursing the employee for the actual costs incurred.

If the subsistence rate paid by the employer exceeds the prevailing Civil Service subsistence rate, the excess amount is a taxable payment.

Subsistence rates should not be paid tax free where the employer otherwise pays for accommodation and meals (e.g. on a company credit card).

4.6.1 Civil Service Subsistence Rates:

The current Civil Service subsistence rates, which apply since 1st September 2022, are as follows:

Normal Rate	24 Hour Allowance			Daily Allowances	
	Reduced Rate	Detention Rate	5 to 10 hours	Over 10 hours	
€167.00	€150.30	€83.50	€16.29	€39.08	

It has been recognised that it is difficult to secure accommodation in Dublin within the standard overnight rate (i.e. €167). To address this difficulty, a “Vouched Accommodation” (VA) Rate was introduced and applies where an employee cannot source accommodation in Dublin within the standard overnight (24 hour allowance) rate.

If the employee can secure accommodation in Dublin within the standard overnight rate of €167 then this rate should be used. If the employee cannot secure accommodation within the standard rate, the employer is permitted to use the VA Rate. The VA Rate consists of the **vouched** cost (i.e. a receipt must be provided) of accommodation, up to a **maximum of €167, plus** the appropriate day rate for meals of €39.08.

Vouched Accommodation Rate – For use in Dublin Only		
Accommodation		Meals
Vouched cost of accommodation up to a maximum of €167.00	Plus	€39.08

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4.6.2 Daily Subsistence Allowance

In order to qualify for a daily allowance an employee must be absent from his normal place of work or home for a period of at least 5 hours and at a distance of at least 8 kms. Where the employee is absent for a period of 10 hours or more, the higher daily allowance can be paid. Time spent travelling to and from the normal place of work does not count as an absence. Time spent travelling on business journeys is considered to be time worked. Where a business journey involves travel directly from/to home, the qualifying absence for subsistence purposes should be based on the shorter journey, either from home to the temporary place of work or from the normal place of work to the temporary place of work.

Example 10

Jason is installing a new payroll system for a client who is based 30 kms away from his normal place of work/home. The installation will take 7.5 hours. Jason's employer could pay him the daily subsistence rate of €16.29 free of tax.

Example 11

Ken attended a meeting at a client's premises which was 15km away from his normal place of work. He left his normal place of work at 10am and returned at 1.30pm. Ken's employer is not permitted to pay Ken a tax free daily subsistence rate as he was not absent for the minimum period of 5 hours. Nevertheless, Ken could be paid a tax free travel rate not exceeding the Civil Service travel rate assuming he used his own car.

4.6.3 24 Hour Allowance Rates

Where an employee is absent from his home or normal place of work for an extended period of time, an overnight or 24 hour allowance may be paid to the employee free of tax. An overnight allowance covers a period of up to 24 hours from the time of departure, as well as any further period not exceeding 5 hours, which is necessarily spent overnight away from home or the normal place of work. Where an absence exceeds 24 hours, a day allowance at the appropriate rate may be paid but only if the last period of 24 hours is exceeded by 5 hours or more.

The 24 hour subsistence allowance is not payable for an absence within 100 km of an employee's home/office, whichever is lesser. However, in exceptional circumstances, the 24 hour allowance may be paid for absences in excess of 50 km of home/office, whichever is lesser.

Example 12

Liam is required to attend a client's premises in Cork at 8.30am on Wednesday morning. He left his normal place of work in Dublin at 4pm on Tuesday and stayed overnight in Cork. He arrived home (shorter journey) at 6pm on Wednesday evening. Liam organised his own meals and accommodation. As Liam is absent for a total of 26 hours, his employer can pay him the overnight allowance of €167 tax free as Cork is more than 100 kms from his home/office.

Example 13

Matt is required to attend a marketing event in Limerick on behalf of his employer which runs from 5pm on Friday and finishes at 5pm on Saturday. He leaves his normal place of work in Dublin at 1pm on Friday and stayed overnight in Limerick on Friday night. He arrived home (shorter journey) at 8pm on Saturday evening. Matt organised his own meals and accommodation. As Matt is absent for a total of 31 hours, his employer can pay him the overnight allowance of €167 (as Limerick is more than 100kms from his home/office) and the daily 5 hour allowance of €16.29 tax free.

4.6.4 Period of Absence

Where an employee is absent from his normal place of work for a prolonged period of time, the 24 hour allowance rates are payable as follows:

- Normal Rate (or the VA Rate in Dublin) is payable for up to 14 consecutive nights.
- Reduced Rate is payable for the next 14 nights.
- Detention Rate is payable for the next 28 nights.

Where a continuous absence exceeds 56 days and the detention rate ceases, the employer should consult his local Revenue office for clearance before paying expenses free of tax.

Generally, Revenue will authorise that an employee may be paid, free of tax, vouched expenses necessarily incurred subject to a limit of 3 nights' subsistence per week at the normal overnight rate. The period of subsistence at any one location is limited to 6 months. Revenue approval should be obtained for any departure from this position (e.g. for an absence in excess of 6 months) which will be determined based on the circumstances of the individual case having particular regard for whether the absence is in fact temporary.

4.6.5 Continuous Absence

Where an employee is assigned to a temporary location, certain absences from this location would not be regarded as breaking the continuity of the stay for the purpose of reducing the subsistence rate. These absences include an absence of no more than two nights due to a return on official business to the employee's normal place of work, plus any nights of a weekend, public holidays, visits home or annual leave. These absences would not qualify for subsistence payments.

4.6.6 Summary of Rules for Payment of Subsistence Rates

- Daily subsistence rates may be paid where the employee is absent from his normal place of work performing his duties for a period of at least 5 hours and at a distance of at least 8 kms.
- The increased daily subsistence rate may be claimed where the employee is absent from his normal place of work performing his duties for a period of at least 10 hours and at a distance of at least 8 kms.
- The overnight allowance is not payable for an absence within 100 kms of an employee's home or normal place of work. However, in exceptional circumstances, the 24 hour subsistence allowance may be paid for absences in excess of 50 kms of home/normal place of work.
- The overnight allowance may be claimed where the employee is obliged to stay overnight at a location, whilst absent during the course of his duties.
- The employee is not obliged to keep receipts in respect of expenses incurred when claiming Civil Service subsistence or overnight allowances, although he must maintain a record of such instances (usually recorded in a diary) and complete an expense claim form.
- No receipts are required for subsistence claims other than the claim forms submitted by the employee. Subsistence rates paid in accordance with the Civil Service Rates are not subject to income tax, PRSI or USC.

4.6.7 Other Schedule of Rates

Where an employer reimburses an employee using some other schedule of rates, Revenue approval should be obtained. An example of this is where an employer may pay an employee a "per diem" rate. The term "per diem" refers to a daily allowance that an employer may pay to an employee while he is temporarily away from his normal place of work, to cover his daily

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expenses. A per diem amount is generally paid regardless of the amount of expenses incurred by the employee and regardless of the distance or time an employee is absent from his normal place of work. Hence, a ‘per diem’ allowance is regarded as a round sum allowance and is fully taxable.

Where an employer reimburses an employee for actual costs incurred (e.g. accommodation and meals, etc.) any additional per diem allowance paid by the employer is fully taxable.

However, where a per diem allowance meets the conditions for the payment of Civil Service subsistence rates, it may be paid tax free, subject to Revenue approval. In this instance, it is necessary to keep some form of documentation (e.g. an expense claim form) to verify that the individual meets the conditions for the payment to be made tax free.

4.6.8 Actual Subsistence Costs Incurred

Where an employer opts to reimburse an employee for the actual cost of accommodation and meals incurred, the amount reimbursed will generally not exceed the amount that would be payable using the prevailing Civil Service subsistence rates outlined above. Any reimbursement of actual costs incurred must be vouched by receipts and the employer must retain the receipts, together with details of travel, etc. for a period of 6 years after the end of the tax year to which the records refer.

4.7 Absences Outside the State

Where an employee travels abroad to perform his employment duties, an employer may pay all the costs involved (actual vouched expenses) or alternatively the employer may pay a daily subsistence rate, which the employee can then use to cover the cost of his accommodation, meals, etc. In such cases, as the domestic subsistence rates will often not be sufficient to cover the relevant costs, foreign subsistence rates may be paid which are greater than the rates payable in Ireland. The rates payable vary according to the foreign location and these are available from any Revenue office. Where actual vouched expenses exceed the flat rate allowances such vouched expenses may be used instead of flat rate allowances.

These rates can be obtained from the Department of Public Expenditure NDP Delivery and Reform website: <https://www.gov.ie/en/circular/1cdc01019c914088980afb80af0c177c/>

The rates may be paid in the following manner in respect of any temporary absence (**up to 6 months**):

Period of Assignment Abroad	% of Subsistence Rate for Relevant Location
First Month	100%
Second and Third Month	75%
Fourth, Fifth and Sixth Month	50%

For long term absence i.e. assignment is **greater than 6 months**, subsistence rates may be paid in the following manner:

Period of Assignment Abroad	Allowable Subsistence
First month of assignment (to facilitate the employee obtaining self-catering accommodation)	Up to the overnight rate
Remainder of Assignment	Up to the cost of reasonable accommodation plus 50% of the day rate (10 hours) for the location

The information as outlined is only relevant to the extent to which the employee remains within the charge to Income Tax. If the employer obtains a PAYE Exclusion Order for an employee (i.e. the employer is not required to deduct Income Tax from the employee under the PAYE system), the question of whether subsistence can be paid free of tax does not arise, as all payments made to that employee are made without deduction of Income Tax and USC. Advice should be obtained in relation to any tax liabilities which may arise in the other country.

4.8 Records to be maintained by Employer

An advantage of the travel rate system is that employees do not have to keep a precise record of actual costs of business travel, meals or accommodation. When paying tax free Civil Service travel and subsistence rates, employers are required to retain sufficient records confirming that the employee meets the qualifying criteria as follows, the:

- Name of the employee
- Date and time of the journey
- Reason for the journey
- Distance travelled in kilometres
- Starting point, destination and finishing point
- Basis for the reimbursement of subsistence (e.g. day allowance or overnight allowance).

A record of this kind would, in any event, be required for an employer's financial and internal control purposes and it should therefore not involve additional paperwork. If an employer has doubts about the adequacy of his records for employees (including directors), the local tax office can be consulted. All records relating to any reimbursement of travel and subsistence expenses should be retained by the employer for examination in the event of an audit. The records must be kept for a period of six years unless Revenue authorise an employer to dispose of the records before then.

4.9 Site-based Employees

A site-based employee can be described as one who does not have a fixed base and who, in the course of his employment, performs substantive duties on behalf of his employer at different locations, generally for periods longer than 1 day (e.g. employees in the construction industry).

Revenue accepts that expenses of travel and subsistence not exceeding €181.68 per week (known as 'country money') may be paid tax-free to a site-based employee where the employee is employed and working at a site which is 32km or more from the employer's base, subject to the following exclusions. For employees in the construction and electrical contracting industries in the Dublin area, where travel and subsistence has traditionally been calculated by reference to distances from the General Post Office (GPO), the GPO may continue to be treated as the employer's base for the purpose of this tax treatment (provided this method is used on a consistent basis).

The tax-free treatment of expenses outlined above does not apply where:

- (i) The employee does not incur the expense of travelling to and from the site (i.e. the employee is provided with transport to and from the site by the employer);
- (ii) The employee is provided with board and lodgings by the employer; or
- (iii) The employee is recruited to work at one site only. If the employee subsequently moves to a new site for the same employer, then he may qualify for tax free country money for travelling to the second or subsequent sites.

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The maximum amount payable is €181.68 per week for 5, 6 or 7 days, or €36.34 per day for 4 days or less per week.

Where applicable, country money should be paid in addition to any normal wages which are due. It should not be substituted for wages. Where country money is used as a substitute for wages, it is fully taxable. Adequate records should be retained by the employer which supports the payment of country money tax free.

4.10 Eating on Site Allowance

An “eating on site allowance” may be paid tax free to an employee where the following conditions are met:

- Facilities for making tea, coffee, etc. are not provided on the site by the employer;
- The employee is not in receipt of any other form of tax-free subsistence payment;
- The employee works on the site for at least 1.5 hours before and 1.5 hours after normal lunch break;
- The allowance does not exceed €5 per day.

4.11 Mixed Appointments

As outlined earlier in this chapter, a travelling appointment is where travel is an integral part of the job (e.g. drivers) or where the employee has to travel in the course of his employment (e.g. multiple daily appointments with clients or customers). In this situation the employer’s premises is regarded as the normal place of work and business travel is based on the shorter distance between the temporary location and the employee’s home or the employer’s premises, where the employee commences a business journey from home or returns directly to home.

An employee, who holds a travelling appointment for 75% or more of his workdays in a tax year and is site-based or otherwise engaged for the remainder of the tax year, may have his travel and subsistence reimbursed (subject to a maximum of the prevailing civil service rates) as if he held a travelling appointment for the entire tax year. Country money may not be paid during any period where an employee is deemed to hold a travelling appointment.

Where an employee is site-based for 10 or more consecutive workdays, this period cannot be classified as a travelling appointment. However, the employee may be paid country money for these days if he is performing his duties at a temporary work location and he satisfies the qualifying criteria as previously outlined above.

An employee who has a travelling appointment for less than 75% of his workdays in a tax year and is site-based for the remainder of the tax year may have his travel and subsistence reimbursed on the basis of:

- a) Holding a travelling appointment during the periods where his work fulfils the criteria of a travelling appointment, and
- b) Being a site-based employee during the periods where his work is site based.

Where the employee is employed for a period of less than a whole year, the 75% apportionment should be applied to the period of employment.

4.12 Road Haulier Drivers

Employers in the road haulage industry can reimburse their employees for daily or overnight subsistence expenses based on the prevailing civil service rates, actual receipted expenditure or based on the following rates and conditions which have been agreed between the Irish Road Haulage Association and Revenue:

Rates effective since 1 st September 2022	Subsistence payable to employees with a gross weekly wage of up to €378	Subsistence payable to employees with a gross weekly wage of between €378 - €442	Subsistence payable to employees with a gross weekly wage of €442 and upwards
Travel more than 8 kms and absence of between 5 and 10 hours	€14.94	€14.94	€16.29
Travel more than 8 kms and absence of greater than 10 hours	€28.86	€28.86	€39.08
Travel more than 100 kms in the State – 24 hours absence	€53.77	€65.76	€76.21
Overnight in Britain or Northern Ireland – 24 hours absence	€84.67	€104.85	€116.93
Europe and Elsewhere – 24 hours absence	€100.81	€114.92	€141.15

Conditions:

- The rates outlined above can be paid tax free. Where the amount paid exceeds these rates, the excess is subject to tax, PRSI and USC in the normal manner.
- Appropriate records should be maintained by the employer to identify a driver receiving expenses for the journey he has done which should indicate the date, departure time, destination, relevant invoice or delivery docket and expenses claim form.
- All tachographs must be completed and retained for the last 6 complete tax years.
- Above rates can be paid where driver sleeps in the cab of the lorry.
- Time spent on board ferries from Ireland direct to mainland Europe (excluding UK), will not count for the overnight rates and tax free subsistence should not be paid for the 2 days of a return trip. However, where the driver has commenced work or started his return trip 10 hours or more prior to boarding the ferry and is more than 8 kms away from the employer's base, he can be paid the appropriate 8kms/10 hour rate outlined above.
- The overnight rate is inclusive of the 10 hour subsistence rate.
- The subsistence rates should not be used as a substitute for wages.

Employers are not required to be members of the Irish Road Haulage Association to operate these rates.

4.13 Voluntary Work

Expenses may be paid tax free to an individual working in a voluntary and unpaid capacity for an organisation which is both *altruistic and non-commercial* (e.g. a charity, sports body, etc.) subject to the following conditions, they:

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- Put the unpaid individual in a position to carry out the work, and
- Do not do more than reimburse expenses actually incurred, and
- Do not exceed the prevailing Civil Service rates.

This provision does not apply where the individual receives any other payment in addition to the reimbursement of expenses.

5. Tax relief for unreimbursed car expenses incurred by an employee

Where an employee uses his own car for business purposes and he is required to do so without receiving adequate reimbursement from his employer, he may make a claim for tax relief for the amount of the unreimbursed expenses he incurs. Any contribution by the employer towards the running costs must be deducted before making any claim. This claim must be made directly to Revenue. Any tax relief due will be issued by way of a tax refund following the end of the tax year. Refunds may be claimed in respect of the last 4 years. The employee must satisfy Revenue that he is obliged to use his car on company business and the claim cannot include the cost of travelling to and from his place of employment.

A claim for such an expense allowance is arrived at, by calculating the total running costs of the car for the year, including an allowance for wear and tear (depreciation) of the car. The cost of running the car is then apportioned between business use and private use, based on annual kms travelled. Revenue will generally not accept private travel below 8,000 kms, however, it is open to an employee to argue his case that his private travel is lower, but he will have to have some solid basis for doing so.

A claim form is available on the Revenue website at:

<http://revenue.ie/en/employing-people/documents/claim-car-expenses-capital-allowances.pdf>

Example 14

Joe Kelly is obliged to use his car in his employment as an insurance salesman. His employer pays him a rate of 10c per km to cover petrol costs (€2,000 for the year based on business travel of 20,000 kms). His total travel for the year was 30,000 kms. The cost of his car is €12,000. Calculate the tax relief Joe is entitled to assuming his annual costs are as follows:

Diesel	€2,400
Road tax	€330
Maintenance	€500
Insurance	<u>€750</u>
Running costs	€3,980

Solution 14

Total running costs	€3,980
Wear & Tear €12,000 @ 12.5%* (based on the actual cost of the car)	<u>€1,500</u>
Total annual motoring costs	€5,480
Business use 66.67% (20,000/30,000) (€5,480 @ 66.67%) =	€3,654
Less: Employer's contribution towards costs	<u>€2,000</u>
Expenses incurred for which additional tax relief is due	€1,654

* 12.5% is the current rate of Capital Allowance (depreciation) applicable to a private car.

Tax relief is granted by reducing Joe's taxable income for the year. Assuming he paid tax at the higher rate, this would result in a tax refund of €661.60 (€1,654 @ 40%). Even though the employer paid a tax free travel rate, it was insufficient to meet the actual costs incurred.

6. Removal and Relocation Expenses

Payment of removal and relocation expenses to an employee can be made free of income tax, but only if certain conditions are met. There are two circumstances in which such payments may be made free of income tax, where an:

- a) Employee incurs costs in moving to a new employment location for an existing employer, or
- b) Employee incurs similar expenses in taking up employment with a new employer.

6.1 Conditions

Certain conditions must be met for the payments to be made free of income tax, as follows:

- The reimbursement to the employee, or payments made directly by the employer, must be in respect of removal/relocation expenses actually incurred.
- The expenses must be reasonable in amount.
- The payment of the expenses must be properly controlled.
- Moving house must be necessary.

6.2 Expenses Covered

The only expenses which can be reimbursed free of tax are those which are incurred directly as a result of the change of residence and would include:

- Auctioneer's fees, solicitor's fees and stamp duty arising from moving house.
- Cost of removal of furniture and effects.
- Storage charges.
- Insurance of furniture and effects in transit or in storage.
- Cleaning of stored furniture.
- Travelling expenses on removal.
- Temporary subsistence allowance while looking for accommodation at the new location, subject to a maximum of 10 nights, at rates no higher than Civil Service subsistence rates.
- The vouched rent of temporary accommodation, for a period of no more than 3 months (this may not be paid for the same period for which subsistence rates are being paid).

All expenses (other than subsistence rates) must be vouched by receipts.

6.3 Payments not included

The following expenses may not be reimbursed, free of tax, to an employee as a result of a change of residence, any:

- Part of the capital cost of building or acquiring a house, or
- Any bridging loan interest, or loans to finance the employee buying or building a house, or
- Payment for removal or relocation expenses, where the employee is not obliged to move, or relocate.
- Expenses not directly related to the cost of moving.
- Payment, which is not reimbursement of actual expenditure incurred, i.e. disturbance money.

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Employers are obliged to maintain full records relating to the payment of such expenses as part of their normal records for a period of 6 years.

7. Remote Working

Since 1st January 2022, **Finance Act 2021** introduced statutory tax relief for electricity, heating and broadband expenses incurred by employees who are working from home. Prior to 2022, tax relief on these expenses was provided on a concessionary basis by Revenue.

Tax relief is available to a remote worker, which is an employee or office holder who:

- Works from home on a full-time or part-time basis, or
- Works some of his normal working time at home with the remainder of his normal working time being spent at his normal place of work or in some other place.

The relief is not available to an employee who chooses to bring work home in the evening or weekends outside his normal working hours.

Since 1st January 2022:

- An employee can claim tax relief from Revenue in respect of 30% of the annual electricity, heat and broadband expenses, apportioned based on the number of days worked from home during the year,

less any amount reimbursed or to be reimbursed, directly or indirectly, to the employee by the employer in respect of those expenses.

Prior to 2022, tax relief was available in respect of:

- 10% of the annual electricity and heat expenses apportioned based on the number of days worked from home during the year.
- 30% of the annual broadband costs apportioned based on the number of days worked from home during the year. This concession for broadband only applied during the Covid-19 pandemic,

less any amount reimbursed or to be reimbursed to the employee by the employer in respect of those expenses.

If an expense is shared between 2 or more people (e.g. people living in shared accommodation), the cost should be apportioned based on the amount paid by each individual. This does not apply in the case of married couples/civil partners who are jointly assessed for tax purposes.

Supporting documents such as receipts or proof of payment should be retained by the employee for a period of 6 years from the end of the tax year to which they relate. Alternatively, such documents may be uploaded to Revenue storage using the Receipts Tracker in myAccount which eliminates the requirement for receipts to be retained by the taxpayer. Revenue may request confirmation from the employer confirming the number of days the employee worked from home. To claim tax relief on these expenses, the employee is required to complete an end of year Income Tax return. Revenue plan to introduce real-time credits for remote working relief during 2022. If an employee wishes to avail of real-time relief, he will be required to upload of copy of the receipt or supporting documentation to the Receipts Tracker.

7.1 Working from Home Payment

As an alternative to the employee claiming tax relief from Revenue on such expenses, employers are permitted to pay a remote worker a tax-free Working from Home payment of **up to €3.20 per working day**. Any excess amount paid by an employer is fully taxable (tax, PRSI and USC). Employers should retain records of these payments for the purpose of any potential Revenue compliance intervention.

Where an employer does not pay €3.20 per day to a remote worker, the employee is not entitled to claim a tax deduction for a round sum of €3.20 per day from Revenue. The employee can only claim tax relief from Revenue on the electricity, heat and broadband expenses incurred as outlined above.

Where an employee receives €3.20 per day from their employer, it will generally be sufficient to cover the additional costs light, heat and broadband cost incurred by the employee. However, where the employee believes that the actual vouched expenses incurred exceed the tax-free amount paid by their employer, they retain their statutory right to claim tax relief on the additional amount (i.e. the amount paid by their employer should be deducted from any claim).

If an employee is required to visit a client while he is working from home, he may be paid travel and subsistence tax free subject to the normal rules (i.e. based on the lesser distance between the employee's home or normal place of work and the client's premises and the employee being absent for the required period of time).

The Working from Home payment of €3.20 should not be paid for any days where the employee is not working from home, such as:

- Annual leave,
- Public holidays,
- Protective leave such as maternity, paternity, parental, force majeure leave, etc.
- Sick leave,
- Days where the employee is visiting clients on behalf of the employer and receiving tax-free subsistence payments for these days.

Example 15

Sarah worked from home for 230 days in 2023. What is the tax treatment if her employer pays her a Working from Home payment of:

- a) €2.50 per day
- b) €5.00 per day

Solution 15

- a) *As the Working from Home payment does not exceed €3.20 per day, it can be paid free of income tax, USC and PRSI.*
- b) *As the Working from Home payment exceeds €3.20 per day, the first €3.20 can be paid free of income tax, USC and PRSI, while the excess of €1.80 is fully taxable.*

8. Expenses of Members of State / State Sponsored Committees

Members of State and State Sponsored Committees and Boards are generally regarded as office holders or employees and are subject to tax under the PAYE system. Hence, the payment of tax free travel and/or subsistence rates would generally be in accordance with the prevailing Civil Service rules and rates as outlined earlier in this chapter i.e. the individual must be temporarily

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away from his normal place of work (i.e. the place where the committee or board meetings normally take place) in order to receive a tax free payment of travel and/or subsistence rates.

However, legislation specifically exempts from tax, any payment made by a non-commercial body in respect of travel and subsistence expenses incurred by an individual in attending meetings of the body.⁵ The individual must not otherwise be an employee of the body and the work of these members must generally be carried out at periodic meetings of the body.

To qualify for the exemption the member must be a non-executive member of the body and not in receipt of income (excluding the expenses) from the body in excess of €24,000 per tax year in the case of the chairperson and €14,000 per tax year in the case of other members. The exemption covers expenses up to the Civil Service rates. Where the expenses paid exceed those rates, the excess portion is taxable.

A non-commercial body is a body that is a non-profit organisation whose income is used to assist the body in achieving its purposes. The body should not distribute or make available any of its income for the personal benefit of any officer, employee, etc. other than as wages or salaries for work rendered.

This exemption also applies to non-commercial bodies in the private sector.

9. Expenses of State Examinations Commission Examiners

The reimbursement of any travel and subsistence expenses incurred by an examiner in connection with the State Exams (primarily the Junior Certificate and Leaving Certificate), is exempt from tax, PRSI and USC.⁶ Travel and subsistence expenses incurred by an examiner in relation to:

- The development of examination papers or other examination materials,
- The marking of such paper or materials, or
- The carrying out of invigilator duties at an examination

can be reimbursed tax free by the State Examinations Commission up to the prevailing Civil Service rates. Where the expenses paid exceed those rates, the excess is taxable.

10. Reportable Benefits

Finance Act 2022 provides for the introduction of mandatory reporting by employers to Revenue of 3 specific payments/benefits, collectively referred to as “reportable benefits”. The reportable benefits, which are paid/provided to employees/directors without deduction of tax, are:

- The remote working daily allowance of up to €3.20 per day (*see section 7.1 above*),
- The payment of travel and subsistence expenses (*see section 4 above*), and
- The small benefit exemption (*see section 20.1 in Chapter entitled Taxation of Benefits in Kind*).

The information to be contained in the Reportable Benefits submission is likely to contain*:

- Employee Name

⁵ Taxes Consolidation Act 1997, Section 195A

⁶ Taxes Consolidation Act 1997, Section 195C

- Employee PPS number (address and date of birth will be a requirement in the absence of a PPS number)
- Employment Identifier
- Date of Payment / Benefit
- Amount / Value of Payment or Benefit
- Category and subcategories of amounts / benefit
 - Travel and Subsistence - Vouched travel expenses, Unvouched travel expenses, Vouched subsistence expenses, Unvouched subsistence expenses, Site based employees (country money), Emergency travel, Eating on site daily allowance.
 - Remote Working daily allowance – number of days allowance is paid for.
 - Small Benefit Exemption.

*This may be subject to change.

This reporting requirement is subject to a Commencement Order to allow sufficient time for the IT systems to be updated and stakeholder engagement, but it is anticipated that reporting will commence from the beginning of 2024. This measure is intended to be the start of a phased introduction of additional reporting for employers in respect of the provision of other benefits or payments that have not been subject to tax by the employer through the payroll system.

These reportable benefits will have to be returned on a real-time basis (i.e. when they are provided to the employee or director).

Revenue has commenced a consultation process with relevant stakeholders. Revenue will work with stakeholders to determine a suitable manner of implementing the reporting of benefits to ensure the process is streamlined with employers' current business processes.

CHAPTER 24

Monthly Expenses Claim Form

Employee Name:

Total Travel:

Rate per km and subsistence rates

Claim for month

Total claim for month

Signed By Employee: _____

Signed By Employer: _____

CHAPTER 25

Termination Payments

- 1. Introduction**
 - 2. Statutory Redundancy**
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 - 4. Increased Exemption**
 - 5. Standard Capital Superannuation Benefit**
 - 6. Calculating the Taxable Element of a Termination Payment**
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-

1. Introduction

In general, all payments arising from an office or employment are liable to Income Tax, PRSI and USC. This includes payments made under the terms of an employee's contract of employment. Unless specifically exempt, the employer must operate PAYE, PRSI and USC on such payments.

Lump sum payments arising due to the cessation of an office or employment are treated differently and may be partially or totally exempt from Income Tax, PRSI and USC. Such payments are known as "Termination Payments" (also known as an ex-gratia payment, voluntary redundancy, golden handshake payment, etc.).

The following lump sum or termination payments are totally exempt from Income Tax, PRSI and USC (and ASC for public service employees):

- 1) Statutory Redundancy payments,
- 2) Payments which do not exceed the statutory exemption limits,
- 3) Payments due to death or disability subject to a statutory limit of €200,000,
- 4) Lump sum payments from Revenue approved pension schemes subject to statutory limits,
- 5) Payments to a Revenue approved company pension scheme on behalf of an employee,
- 6) Covid-19 Related Lay-Off Payment. This is a compensatory payment of up to a maximum of €2,268 payable by the Department of Social Protection where an employee was made redundant between 13th March 2020 and 31st January 2025, qualifies for statutory redundancy, but has lost out on reckonable service between 13th March 2020 and 31st January 2022 due to a Covid-19 related lay-off.

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The tax treatment of any payment depends on the circumstances under which the payment is made and the real nature of the agreement between the employer and employee. Where Revenue consider that a redundancy has taken place, any lump sum payment made by the employer may qualify for the exemptions outlined above. Where Revenue consider that a redundancy has not taken place, any lump sum payment made by the employer will be fully taxable. This is a question of fact and should be applied on a case by case basis.

Revenue will generally not consider a redundancy or termination to have taken place:

- Where there is a “fire and re-hire” agreement in place at the time of termination,
- Where there is an expectation or understanding by either the employer or employee that an offer of re-hire would be made at some point in the future (irrespective of the terms of such an offer or the length of time between the fire and the re-hire).
- Where an employee moves between companies within the same group, for example, where an employee moves between subsidiary companies of the same group.

A payment in lieu of notice (PILON) may form part of the termination lump sum payment and qualify for the exemptions outlined below, where the payment is not provided for in the employee’s contract of employment (e.g. the contract may simply state the period of notice to be given by the employer or refer to the employee’s entitlement to notice under the **Minimum Notice and Terms of Employment Acts 1973 to 2005**, but makes no reference to any payment being made by the employer).

If PILON is provided for in the employee’s contract of employment (e.g. the contract may contain a clause which states the employer reserves the right to pay the employee in lieu of notice), the PILON is regarded as a contractual payment and liable to Income Tax, PRSI and USC in the normal manner.

Note: The reason why an employer may include a clause in the contract of employment to pay an employee in lieu of notice is to enable him to legally terminate the contract without breaching it (i.e. the employee can be paid in lieu of working his notice). If the contract provides for a period of notice only with no provision for PILON, arguably the employee has the right to work during this notice period. It would be at the employee’s discretion whether he accepts any settlement offered by the employer as an alternative to working his notice period.

Where the employer transfers ownership of a company asset (e.g. a company car) to an employee on termination of his employment, the market value of the asset at the date of termination/transfer (less any amount paid by the employee to the employer) should be included in the termination package and taxed accordingly.

The exemptions which apply to termination payments can be applied to voluntary redundancy payments which exceed statutory redundancy, or they can be applied where an employee does not qualify for a statutory redundancy payment, such as retirement. An employee is not required to have a minimum period of service to qualify for an ex-gratia termination payment which is payable at the employer’s discretion.

Any payments of earned income (e.g. salary, bonus, commission, holiday pay, contractual PILON, etc.) should be subjected to Income Tax, PRSI and USC in the normal manner and cannot be exchanged for a tax free termination payment under any circumstances.

2. Statutory Redundancy

Redundancy arises where an employee's job ceases to exist. This occurs in circumstances where the employer ceases to carry on the business, the requirement for employees has diminished, or the work is to be done in a different manner for which the employee is not trained or skilled.

To qualify for a statutory redundancy payment, an employee must:

- Be aged 16 years or over. Employees aged 66 or over (insurable at PRSI Class J) which except for their age, would be insurable under PRSI Class A are also covered, **and**
- Have a minimum of 104 weeks (2 years) continuous service over the age of 16, **and**
- Be insurable under PRSI Class A. This requirement does not apply to part-time employees. Part-time employees insurable under PRSI Class J are also entitled to statutory redundancy subject to the above conditions being satisfied.

Statutory redundancy is payable at a rate of:

- 2 weeks' pay for each year of service
- Plus one week's pay

Reference to 'pay' above refers to the current normal weekly rate of pay, including average regular overtime and BIK, but before deduction of Income Tax, PRSI and USC (and ASC for public sector employments). Statutory Redundancy is based on an earnings ceiling of €600 per week and is **exempt** from Income Tax, PRSI and USC. If the period of employment is not an exact number of years, the excess days are credited as a portion of a year.

Employers should issue a redundancy certificate (i.e. a document outlining the details relating to the employee's statutory redundancy payment such as a print out of the results from the online redundancy calculator <https://services.mywelfare.ie/en/topics/statements-refunds-and-calculators/>) to the employee along with the statutory redundancy payment at the date of termination. Where an employer is unable to pay statutory redundancy, employees should submit an RP50 online to the Redundancy Payments Section to obtain the statutory redundancy payment directly from the DSP.

Example 1

James was made redundant on 31st March after 5 years and 6 months' service. His weekly pay was €475. Calculate his statutory redundancy.

Solution 1

Weekly Pay		€475
Service		5.5 years
Statutory Redundancy		
2 weeks' pay for each year of service	€475 x 2 x 5.5 =	€5,225
Add 1 bonus week		€475
Total Statutory Redundancy		€5,700

Example 2

John was also made redundant on 31st March after 5 years and 6 months' service. His weekly pay was €750. Calculate his statutory redundancy.

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Solution 2

Weekly Pay	€750
Service	5.5 years
Statutory Redundancy	
2 weeks' pay for each year of service	€600 x 2 x 5.5 =
Add 1 bonus week	<u>€600</u>
Total Statutory Redundancy	€7,200

3. Basic Exemption

Where an employee receives a termination payment from his employer which does not exceed the Basic Exemption¹ of €10,160 plus €765 for each complete year of service, then the termination payment can be paid tax free, subject to the life-time tax free limit of €200,000 (covered later) not being exceeded.

When calculating the number of complete years' service, Revenue does not consider a career break to be service, however periods of employment before and after the career break can be aggregated. Periods of foreign-service or service with various group companies by an employee can be included as overall service for the purpose of calculating the Basic Exemption, Increased Exemption or SCSB Exemption (covered later). This includes situations where an employee commences employment abroad with an employer which is part of a multinational group and is subsequently transferred to the Irish entity. If his employment is terminated while in Ireland, the total period of service is included.

An employee may receive the Basic Exemption on any number of occasions over their lifetime from various employers who are not connected or associated with each other. If an employee receives a number of termination payments from the same or associated employers, they are treated as a single payment from one employer.

Example 3

Patrick left his employment and received an ex-gratia termination payment of €7,500 from his employer. This payment was made at the discretion of the employer in recognition of his 5 years' good service. Calculate any tax liability due on this payment assuming this is his first termination payment.

Solution 3

As the amount of the termination payment does not exceed €13,985 (i.e. €10,160 plus €765 for the 5 years of service), Patrick will not incur any tax liability as the termination payment does not exceed the Basic Exemption and can be paid tax free.

4. Increased Exemption

The Basic Exemption may be increased by an additional amount of €10,000 (known as the Increased Exemption)² where the individual is:

- Not a member of the employer's occupational pension scheme, **or**
- If the employee is a member of the employer's occupational pension scheme, he has not received a tax free lump sum from that pension scheme and irrevocably gives up his right to receive a tax free lump sum from that scheme at a future date.

¹ Taxes Consolidation Act 1997, Section 201

² Taxes Consolidation Act 1997, Schedule 3

Where an individual wishes to surrender his right to a tax free lump sum (also known as the relevant capital sum) from the pension scheme, the employee must sign an irrevocable waiver to this effect which should be forwarded to the administrator of the pension scheme on or before the date of termination of employment. A copy of the waiver letter should be retained by the employer as part of their payroll records. This may result in him receiving a higher taxable pension payment in retirement or he may receive a taxable lump sum payment from the pension, depending on the rules of the pension scheme.

Where an employee is a member of the employer's occupational pension scheme, the Increased Exemption of €10,000 is reduced by:

- Any tax free lump sum received from the pension scheme,
- Any tax free lump sum which the employee is immediately entitled to from the pension scheme, or
- The net present value (i.e. current value), at date of termination, of any future tax free lump sum from the pension scheme which arises at a future date after the employment has ceased (e.g. a lump sum to which the employee becomes entitled to at retirement age). This includes any tax free lump sum arising from an option to commute a pension, in whole or in part, in favour of a lump sum at a future date. The net present value of any tax free lump sum may be obtained from the pension fund administrator.

Note: this tax free lump sum payment from a pension scheme does not refer to a refund of pension contributions, which may arise where an employee ceases to be a member of a pension scheme with less than 2 years' membership. References to an employer's occupational pension scheme do not include a personal pension (Retirement Annuity Contract) or a PRSA.

If the tax free lump sum receivable under an approved pension scheme is less than €10,000 the Basic Exemption may be increased by an amount equal to the difference between the tax free lump sum received, or receivable, and €10,000. For example, if the net present value of a lump sum from the pension scheme is €2,000, an Increased Exemption of €8,000 (€10,000 - €2,000) will apply. In this instance the individual receives the Increased Exemption of €8,000 and retains his entitlement to a tax free lump sum from the pension scheme.

If the lump sum or the net present value of that lump sum, as appropriate, exceeds €10,000, and the employee wishes to retain this entitlement, then the Increased Exemption should not be granted.

The Increased Exemption may only be granted once in a 10 year period. **Revenue approval is not required** to use the Increased Exemption. However, the employer should ensure that the employee meets the qualifying conditions. The employer should obtain a signed declaration from the employee confirming that:

- The employee has not claimed the Increased or SCSB Exemption (covered later) in the previous 10 tax years, and
- The employee is not a member of the employer's occupational pension scheme, or if he is a member, he has irrevocably given up his right to receive a tax free lump sum from that scheme at a future date.

The Increased Exemption is subject to the €200,000 tax free life-time limit which applies to termination payments (covered later).

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Example 4

Paul Jones retired after 12 years and 11 months' service. The company paid him a golden handshake of €50,000. He is also entitled to receive a tax free lump sum from the company pension scheme of €12,000. Calculate the tax exempt portion of the termination payment assuming he:

- Does not revoke his right to receive the tax free lump sum from the company pension scheme,
- Revokes his right to receive the tax free lump sum from the company pension scheme.

Solution 4(a)

If he does not revoke his right to receive the tax free lump sum from the company pension scheme of €12,000 he will receive no increase in the basic exemption as the tax free lump sum exceeds €10,000.

Basic Exemption		€10,160
Additional	12 years x €765 per year	€9,180
Total Exemption		€19,340

The balance of €30,660 is liable to Income Tax and USC, but it is not liable to employee or employer PRSI.

Solution 4(b)

If he revokes his right to receive the tax free lump sum from the company pension scheme of €12,000, then he is entitled to the full increased exemption of €10,000.

Basic Exemption		€10,160
Additional	12 years x €765 per year	€9,180
Increased Exemption		€10,000
Total Exemption		€29,340

The balance of €20,660 is liable to Income Tax and USC, but it is not liable to employee or employer PRSI.

Example 5

John Ryan retired after 22 years and 1 month's service. The company paid him a golden handshake of €75,000, and he is also entitled to receive a tax free lump sum from the company pension scheme of €7,000.

Calculate John's total exemption assuming that he does not revoke his right to receive the tax free lump sum from the company pension scheme.

Solution 5

If he does not revoke his right to receive the tax free lump sum from the company pension scheme of €7,000, the Basic Exemption can be increased by an amount equal to the difference between the amount receivable and €10,000 i.e. €10,000 - €7,000 = €3,000.

Basic Exemption		€10,160
Additional	22 years x €765 per year	€16,830
Increased Exemption	€10,000 - €7,000 =	€3,000
Total Exemption		€29,990

The balance of €45,010 is liable to Income Tax and USC, but it is not liable to employee or employer PRSI.

Alternatively, the employer may calculate another exemption figure known as the Standard Capital Superannuation Benefit (SCSB). An employer is not obliged to calculate the Increased Exemption or the SCSB exemption. Strictly speaking, any relief due in excess of the Basic Exemption should be claimed by the individual directly from Revenue. However, Revenue permits employers to use either the Increased Exemption or the SCSB Exemption. An employee may make a claim for an exemption via myEnquiries on myAccount where it was not granted by his employer. All these exemptions are subject to a life-time limit of €200,000.

5. Standard Capital Superannuation Benefit

The Standard Capital Superannuation Benefit (SCSB) exemption is calculated as follows:³

$$(A \times B / 15) - C \text{ where:}$$

A = The average annual taxable emoluments over the last 36 months of service before the date of termination.

Taxable emoluments refers to income that is assessable to tax under Schedule E (e.g. salary, bonuses, commission, overtime, holiday pay, notional pay in respect of any BIK, an employer contribution to an employee's PRSA or Retirement Annuity Contract, share remuneration including the value of any shares appropriated to an employee under an Approved Profit Sharing Scheme, etc.) before deduction of any amount qualifying for tax relief under another provision of the tax legislation, such as:

- Contributions to a pension scheme or PRSA,
- Additional Superannuation Contribution payable by public servants,
- Revenue approved salary sacrifice (e.g. travel pass or bicycle under the cycle to work scheme),
- Tax relief due under the Foreign Earnings Deduction (FED) or Special Assignee Relief Programme (SARP) provisions.

If an employee was on leave during this 36 month period (e.g. sick leave, maternity leave, paternity leave, parental leave, temporary lay-off due to Covid-19 for which the employee was in receipt of the Pandemic Unemployment Payment (PUP), etc.) and did not receive a payment from his employer, the employer is permitted to use the emoluments from the last 36 months of paid service (excluding the unpaid leave). The employer is permitted to go back further than 36 months to ascertain 36 months of paid service.

If however, the employer paid the employee while he was absent on leave, the employer is not permitted to go back further than 36 months. Instead, the amount paid by the employer (excluding any DSP benefit) should be used. This includes situations where an employer pays the employee a reduced salary or top up payment while on leave (e.g. a sick pay scheme, maternity pay scheme or where an employer made a payment to an employee under the Temporary Wage Subsidy Scheme (TWSS).

³ Taxes Consolidation Act 1997, Schedule 3

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Where an employee was in receipt of notional pay only during a period of leave, the employer should contact Revenue to obtain confirmation as to what amounts and periods of time should be taken into account.

Note: The SCSB can also be used where the employee has not attained 36 months service. For example, if an employee had 26 months service, his average annual emoluments is calculated by dividing the total emoluments by 26 months and multiplying the answer by 12 months to find the average annual emoluments.

B = The number of complete years of service.

Complete years of service includes periods of paid and unpaid leave such as sick leave, maternity leave, paternity leave, parental leave, carer's leave, etc. Periods of foreign-service or service with various group companies by an employee can be included as overall service. It does not however include time spent on a career break. Any time spent on a career break must be excluded when calculating the number of complete years of service. The weeks during which an employee was not working and in receipt of TWSS are included when calculating years of service. The weeks during which an employee was not working and in receipt of PUP are excluded when calculating years of service.

C = The value of any tax free lump sum received, or the net present value of any future tax free lump sum receivable, from the employer's company pension scheme.

The lump sums taken into account are only those available from an occupational pension scheme, it does not include a lump sum arising from a personal pension nor a PRSA.

The tax free lump sum does not include any refund of pension contributions, which an employee might receive if he ceases to be a member of the pension scheme with less than 2 years' pensionable service).

Note: The value of C equals:

- (i) Nil, if the employee is not a member of the employer's pension scheme,
- (ii) Nil, if the employee is a member of the employer's pension scheme and has not received any tax free lump sum from the pension scheme to date and irrevocably surrenders his entitlement to any tax free lump sum arising from that scheme at a future date,
- (iii) A maximum of €200,000 due to the restriction on the amount of the tax free lump sum which can be received from an approved pension fund.

On retirement, an employee would normally have the choice of receiving a lump sum, all or part of which may be tax free, with the balance being invested in an annuity or approved retirement fund to provide for a source of income in retirement, but by waiving his entitlement to a lump sum, he would then have a higher amount for investing.

The figure obtained from the SCSB calculation can be substituted for the Basic Exemption or Increased Exemption where it gives a higher tax free figure. There is no requirement to obtain Revenue approval to apply the SCSB. Generally speaking, the SCSB is designed to benefit employees who have long service with their employer.

Example 6

Thomas retired from his employment on 30th August after 20 years and 10 months' service. His employer paid him a golden handshake of €75,000. In addition, he is entitled to receive a tax free lump sum from his employer's pension scheme of €25,000. His taxable emoluments (earnings plus BIK) for the last 36 months to date of leaving are as follows:

Y/E 30.08.23	€60,000
Y/E 30.08.22	€58,000
Y/E 30.08.21	<u>€56,000</u>
	€174,000

$$\text{Average per 12 months} \quad (\text{€174,000} / 3) = \quad \text{€58,000}$$

Calculate the taxable element of his termination payment using the SCSB, assuming:

- a) Thomas retains his tax free lump sum entitlement from the pension scheme, and
- b) Thomas revokes his tax free lump sum entitlement from the pension scheme.

Solution 6(a)

SCSB calculation:	(A x B / 15) - C	
A x B / 15 =	€58,000 x 20 / 15 =	€77,333.34
C =		<u>€25,000.00</u>
Exemption		€52,333.34

Taxable element of termination payment

Total payment	€75,000.00
Tax exempt portion	<u>€52,333.34</u>
Taxable element	€22,666.66

Solution 6(b)

SCSB Calculation:	(A x B / 15) - C	
A x B / 15 =	€58,000 x 20 / 15 =	€77,333.34
C =		<u>€0.00</u>
Exemption		€77,333.34

Taxable element of termination payment

Total payment	€75,000.00
SCSB exemption	<u>€77,333.34</u>
Taxable element	€0.00

As the SCSB exemption of €77,333.34 is greater than his termination payment of €75,000, the full termination payment of €75,000 can be paid tax free, subject to the lifetime limit of €200,000 not being exceeded.

Any part of a termination payment in excess of the tax exempt limit (Basic, Increased or SCSB exemption, as appropriate) is subject to Income Tax and USC, but it is not liable to either employee or employer PRSI.

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6. Calculating the Taxable Element of a Termination Payment

1. Calculate the Basic Exemption:

- (a) €10,160
- (b) Add €765 for each complete year of service

2. Calculate the Increased Exemption (if necessary):

- Add an additional figure of up to €10,000, (the difference between the tax free lump sum receivable from the pension scheme and €10,000) to the Basic Exemption.

3. Calculate the SCSB (if necessary) and compare it to the Basic Exemption or the Increased Exemption figure as appropriate.

4. Apply the higher exemption limit to the termination payment to arrive at the taxable element.

5. The taxable element of a termination payment is subject to Income Tax and USC under the PAYE system.

6. PRSI (Employee or Employer) is not payable on termination payments (including the taxable element), as termination payments are not regarded as reckonable earnings for PRSI purposes. ASC is not payable on a termination payment received by a public servant as it is not considered to be a payment in respect of service as a public servant.

Example 7

Matt left his employment on 17th May (week 20) after 16 years and 9 months' service and received a termination payment of €50,000. Matt is a member of his employer's Revenue approved pension scheme and the present day value of his tax free lump sum is €9,000. Matt has chosen to retain his entitlement to this lump sum from the pension scheme.

Matt's cumulative gross pay to week 19 is €19,000 (€1,000 per week) and he paid USC of €579.79. His cumulative taxable pay to week 19 is €18,050 and he paid tax of €2,999.75. Matt was paid €1,000 in week 20 and he made a pension contribution of €50 in week 20. He has a weekly SRCOP of €769.24 and a weekly tax credit of €68.27.

Matt's emoluments (earnings + BIK) for the past 36 months are as follows:

Y/E 17/05/23	€52,000
Y/E 17/05/22	€50,700
Y/E 17/05/21	€49,400

Calculate:

- a) The amount of Matt's taxable termination payment.
- b) Matt's Income Tax and USC for week 20 on the Cumulative Basis to include his taxable termination payment.
- c) Matt's PRSI liability and his employer's PRSI liability for week 20.

Solution 7 (a)

Matt - Taxable portion of Termination Payment

Step 1: Calculation of Basic Exemption

Basic Exemption

Additional: 16 years x €765 per year

€
10,160.00
<u>12,240.00</u>
22,400.00

Step 2: Calculation of Increased Exemption

Increased Exemption	$\text{€}10,000 - \text{€}9,000 =$	<u>1,000.00</u>
		<u>23,400.00</u>

Step 3: Calculation of SCSB: $(A \times B / 15) - C$

Where: A = Average annual earnings in past 36 months

B = 16 years

C = €9,000

Y/E 17/05/23	€52,000
Y/E 17/05/22	€50,700
Y/E 17/05/21	€49,400
	<u>€152,100 / 3 = €50,700.00</u>

SCSB =	$\text{€}50,700 \times 16 / 15 - \text{€}9,000 =$	<u>45,080.00</u>
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Step 4: Choose higher exemption figure

SCSB gives the higher exemption figure of: 45,080.00

Lump sum payment	<u>50,000.00</u>
Less: SCSB Exemption	<u>45,080.00</u>
Taxable Element	<u>4,920.00</u>

Solution 7 (b)

Step 5: Matt – Income Tax and USC for week 20	€	€
	Gross Pay	Taxable Pay
Cumulative pay to date	19,000.00	18,050.00
Add: Salary this period	1,000.00	1,000.00
Add: Taxable termination payment	<u>4,920.00</u>	4,920.00
Less: Pension contribution		<u>(50.00)</u>
Cumulative gross pay and taxable pay	24,920.00	23,920.00
 Cumulative SRCOP	 $\text{€}769.24 \times 20 \text{ weeks} =$	 15,384.80
 Gross Tax	 $\text{€}15,384.80 @ 20\% =$	 3,076.96
	$\text{€}8,535.20 @ 40\% =$	<u>3,414.08</u>
		6,491.04
Less cumulative tax credits	$\text{€}68.27 \times 20 \text{ weeks} =$	<u>1,365.40</u>
Cumulative Tax liability		5,125.64
Less Tax paid to date		2,999.75
Tax liability		<u>2,125.89</u>

USC

Income up to Rate 1 COP	$\text{€}231 \times 20 = \text{€}4,620.00 @ 0.5\% =$	23.10
Excess up to Rate 2 COP	$\text{€}209.77 \times 20 = \text{€}4,195.40 @ 2\% =$	83.90
Balance of pay at Rate 3	$\text{€}16,104.60 @ 4.5\% =$	724.70
Cumulative USC		831.70
Less USC deducted to date		579.79
USC liability this period		<u>251.91</u>

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Solution 7 (c)

Step 6: Employee and Employer PRSI for week 20

Employee PRSI	€1,000 @ 4% =	€	40.00
Employer PRSI	€1,000 @ 11.05% =		<u>110.50</u>

7. Tax Exemption for Retraining on Redundancy

An exemption from Income Tax, PRSI and USC exists where the employer incurs the cost of retraining employees as part of a redundancy package offered to an employee.⁴ This exemption only applies where an employee's job is being made redundant in accordance with the Redundancy Payments Acts. The cost of the retraining, up to a maximum of €5,000, for each full-time employee who has more than 2 years' service, or deemed to have more than 2 years' service by virtue of the Redundancy Payments Acts is exempt from tax.

To qualify for the exemption, the employer must provide the retraining as part of the redundancy package, and it must be made available to all eligible employees. The retraining must be designed to improve skills or knowledge relevant to obtaining employment or setting up a business. The course must be completed within 6 months of the employee being made redundant.

This relief does not apply:

- To a payment in relation to termination of employment which is not a redundancy,
- To any retraining provided to either or both the spouse and any dependant of the employer,
- Where there is an arrangement in place allowing the employee to receive part or the whole of the cost of the retraining in money, or money's worth.

This exemption is in addition to Statutory Redundancy, Basic or Increased Exemption, or the SCSB exemption.

8. Life-time Limit on Tax Free Payments

A life-time limit of €200,000 applies to the maximum tax free amount an employee or office holder can receive in the form of a termination payment. It is also exempt from PRSI and USC. This limit includes all termination payments received by an employee from all employments.

Note: This does not permit an employer to pay a termination payment up to €200,000 tax free. The amount of any tax exempt termination payment which an employer is permitted to pay should be calculated as previously outlined using either the Basic, Increased or SCSB exemption as appropriate, subject to the €200,000 lifetime limit not being breached.

However, this life-time tax free limit of €200,000 does not include:

- (a) Statutory redundancy, or
- (b) An amount up to €5,000 to cover the cost of retraining on redundancy which an employer may provide as part of a redundancy programme.

Example 8

Tony was made redundant from his employment in May. He received a termination payment of €62,600 which included €12,600 statutory redundancy and an ex-gratia payment of €50,000, of which €35,000 was tax free due to the SCSB. Tony previously received a tax free termination payment of €40,000 from his previous employer. Calculate Tony's remaining life-time limit in respect of any future tax free termination payment.

⁴ Taxes Consolidation Act 1997, Section 201

Solution 8

Tony's remaining life-time limit in respect of any future tax free termination payment is €125,000 (€200,000 - €35,000 - €40,000). Statutory Redundancy is not included when calculating the life-time limit.

It is best practice for employers to obtain a written declaration from an employee confirming the amount of any tax free termination payment (excluding the amount of statutory redundancy) previously received, prior to making any tax free termination payment.

Any termination payment paid by an employer on account of the death, injury or disability of an employee is exempt from Income Tax, PRSI and USC subject to a life-time limit of €200,000.⁵ This limit will be reduced by the aggregate amount of all previous or simultaneous payments paid by that employer or another employer which are exempted from tax due to the death, injury or disability of the employee. Where this exemption applies to any payment or part of a payment, the employee is not entitled to avail of any other termination exemptions (e.g. Basic, Increased or SCSB exemption) in respect of any excess portion, except for the retraining exemption. Any excess amount is fully taxable.

9. Reporting Requirements

When a termination payment is made to an employee or office holder the taxable and non-taxable amounts (i.e. amounts covered by the Basic Exemption, Increased Exemption, SCSB Exemption, the cost of retraining on a redundancy up to a maximum of €5,000, or any payment due to the death injury or disability of the employee) must be included in the employer's Payroll Submission for the period it is paid to the employee.

The taxable portion should also be reported as part of gross pay as it is liable to tax and USC.

While statutory redundancy is tax exempt, it is not regarded as a non-taxable termination payment and hence should not be included in a Payroll Submission.

Example 9

Following on from Example 8, assuming Tony received his termination payment on 31st May, his employer should submit the non-taxable amount of €35,000 and the taxable amount of €15,000 (excluding the statutory redundancy) to Revenue on a Payroll Submission on or before 31st May.

While an employer is required to report any tax exempt payment made to an employee or office holder on account of death, injury or disability on a Payroll Submission, the employer must also notify Revenue of the reason why the payment is not subject to tax by 15th February of the following tax year.⁶ As it is not possible to include the reason the payment qualifies to be paid tax free on a Payroll Submission, the employer should notify Revenue of the following details through myEnquiries:

- Name and address of the person to whom the payment was made
- PPS number of the person who received the payment
- Amount of the payment
- Reason why the payment is not subject to income tax (e.g. in the case of a payment made on account of injury or disability, the extent of the injury or disability, as the case may be).

⁵ Taxes Consolidation Act 1997, Section 201 as amended by Finance Act 2013

⁶ Taxes Consolidation Act 1997, Section 201

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10. Tax Treatment of Employment Law Compensation Claims

Certain payments made by employers to employees arising from claims under employment law are exempt from income tax.⁷ Such payments or awards arise from claims for infringement of an employee's statutory rights or entitlements or an employer's obligations under employment legislation (i.e. discrimination, harassment or victimisation). Where such a payment is made to an employee by an employer which qualifies for total exemption from income tax, there is no requirement to seek approval from Revenue, instead the employer can make the payment without deduction of Income Tax, PRSI and USC.

This exemption does not extend to payments made in respect of actual remuneration (e.g. arrears of salary or holiday pay) or payments made in connection with or as a consequence of the termination of the employee's employment.

10.1 Relevant Act

Compensation payments made under a “relevant Act” qualify for total exemption from Income Tax, PRSI and USC subject to certain conditions (outlined below). A relevant Act is an Act which provides for the protection of an employee's rights and entitlements or places obligations on an employer towards an employee. Some examples of relevant Acts include:

- Maternity Protection Acts 1994 to 2022
- Paternity Leave and Benefit Act 2016
- Adoptive Leave Acts 1995 and 2005
- Parental Leave Acts 1998 to 2019
- Parent's Leave and Benefit Act 2019
- Payment of Wages Act 1991
- Terms of Employment (Information) Acts 1994 to 2014
- Minimum Notice and Terms of Employment Acts 1973 to 2005
- Protection of Young Persons (Employment) Act 1996
- Protection of Employees (Part-Time Work) Act 2001
- Protection of Employees (Fixed-Term Work) Act 2003
- Protection of Employees (Temporary Agency Work) Act 2012
- Redundancy Payments Acts 1967 to 2022
- Organisation of Working Time Act 1997
- Carer's Leave Act 2001
- Employment Equality Acts 1998 to 2021
- Protected Disclosures Act 2014
- Sick Leave Act 2022

10.2 Qualifying Payments

Compensation payments under a relevant Act qualify for a total exemption from Income Tax, PRSI and USC where either of the following conditions are met:

- (a) The payment arises from a claim made under a **relevant Act** following a formal hearing before a **relevant authority** (e.g. an Adjudication Officer of the Workplace Relations Commission, Labour Court, District Court, Circuit Court, High Court, etc.) or through a **mediation process** on foot of a **recommendation, decision or determination** by that relevant authority. Where mediation results in an agreement which is acceptable to both the

⁷ Taxes Consolidation Act 1997, Section 192A

employer and the employee, the mediator draws up a settlement agreement. A payment made by an employer in accordance with this settlement can be treated as a payment made on foot of a recommendation, decision or determination by a relevant authority.

- (b) The payment arises from a claim made under a **relevant Act** made under an “out of court” settlement as an alternative to a formal hearing, subject to **all** of the following conditions being met:
- The claim by the employee and the settlement agreement is evidenced in writing.
 - The agreement is not between “connected persons” (e.g. employer and relative, employer and director).
 - The claim would have been a bona fide claim under a relevant Act had it been made to a relevant authority (e.g. there are sufficient grounds for the claim, the claim is within the scope of the Act, the claim is made within the specified time limit in the Act, etc.).
 - The claim is likely to have been the subject of a recommendation, decision or determination by a relevant authority that a payment be made to the person making the claim.
 - The payment does not exceed the maximum amount which could have been awarded under relevant legislation by an Adjudication Officer of the WRC, Labour Court, High Court, etc. as appropriate. For example, the maximum compensation which can be awarded in respect of a breach of the **Maternity Protection Acts 1994 to 2022** is 20 weeks’ pay.

Revenue state that in relation to the original statement of claim, this written documentation should reasonably be expected to include the nature of the claim and the nature of the relationship between the parties or a high-level summary of the allegations and impact of the allegations.

Employers are required to retain copies of any such agreements, to include the employee’s claim, for a period of 6 years from the date the payment was made and make them available to Revenue when requested to do so.

There is no requirement for an employer to seek Revenue approval in respect of an out of court settlement. However, where the employer wishes to obtain Revenue approval, a copy of the claim and settlement should be submitted to Revenue.

Where the payment meets the qualifying conditions as outlined above, it should not be included in a Payroll Submission.

10.3 Non-Qualifying Payments

The following payments (however described) do not qualify for an exemption from Income Tax, PRSI and USC:

- Actual remuneration or arrears of remuneration arising from a claim under one of the above Acts (e.g. non-payment of wages, payment of insufficient wages, a payment in respect of a claim under the **Organisation of Working Time Act 1997** for holiday pay, etc.). This payment is taxable under the PAYE system in the normal manner.
- Payment in respect of the termination of an office or employment (e.g. a claim for unfair dismissal under the **Unfair Dismissals Acts 1977 to 2015**). **Note:** Although the payment in respect of termination of an employment is not totally exempt from tax, it may qualify for tax relief under the rules which apply to termination payments (i.e. Basic, Increased or SCSB

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exemptions as previously outlined in this chapter). While any excess amount may give rise to a tax and USC liability, such payments are not liable to PRSI.

- Compensation for a reduction or possible reduction in future remuneration arising from a reorganisation of a business or changes in work procedures, work methods, or a change of location of the duties of the employment. This payment is taxable under the PAYE system in the normal manner, however, in very limited circumstances the employee may be entitled to claim tax relief on this payment directly from Revenue at the end of the tax year where the payment pushes the employee into a higher rate of tax.
- Compensation payments made by court order under the **Employment Permits Acts 2003 to 2014**. Where an employer employs a foreign national without a valid work permit, the individual is entitled to take a civil action against his employer to recover compensation for services rendered, notwithstanding the illegality of the contract. Such payments are subject to Income Tax and USC by the employer, but are not liable to PRSI.

Non-qualifying payments should be reported to Revenue in a Payroll Submission on or before the date of payment. Where the payment relates to the termination of the employment (i.e. a claim under the Unfair Dismissals Acts) both the taxable and non-taxable elements must be reported in a Payroll Submission as if it was a termination payment.

10.4 Payment of Legal Fees

The payment of legal fees by an employer on behalf of a director or employee generally gives rise to a taxable BIK for the director or employee. However, where an employer pays legal fees on behalf of a director or employee as a result of:

- a) An investigation or disciplinary procedure initiated by an employer, or
- b) An action taken by the director or employee to recover compensation for loss of office or employment, or
- c) A breach of employment law by the employer,

the amount of the legal fees paid, whether it is the total amount or a partial amount, can be paid tax free where the following conditions are met:

- The legal fees are due to a member of the legal profession arising from representing the employee or director, and
- The legal fees relate to the investigation or disciplinary procedure initiated by the employer or the action taken by the employee or director against the employer only (i.e. any other legal fees do not qualify for this treatment),
- The legal fees are paid directly to the legal representative following the invoice being produced to the employer, and
- Where the payment is made under a settlement agreement, the payment of the legal fees must form part of the specific terms of the settlement agreement.

Where the above conditions are met, and the payment of the legal fees qualifies to be paid tax free, it is not reported on a Payroll Submission.

11. Jobseeker's Benefit and Redundancy/Termination Payments

Employees who are made redundant are entitled to claim Jobseeker's Benefit. Where an employee, who is under 55 years of age, is made redundant and the total gross amount of statutory

redundancy and/or a termination payment received by him exceeds €50,000, he will lose his entitlement to claim Jobseeker's Benefit for a period of up to 9 weeks as follows:

Termination Payment	Period of loss of Jobseeker's Benefit
€50,000 to €55,000	1 week
€55,000.01 to €60,000	2 weeks
€60,000.01 to €65,000	3 weeks
€65,000.01 to €70,000	4 weeks
€70,000.01 to €75,000	5 weeks
€75,000.01 to €80,000	6 weeks
€80,000.01 to €85,000	7 weeks
€85,000.01 to €90,000	8 weeks
€90,000.01 and over	9 weeks

However, employees who are aged 55 years or over who are made redundant will not lose their entitlement to claim Jobseeker's Benefit.

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Payroll Submission

- 1. Introduction**
 - 2. Payroll Submission**
 - 3. Definition of Pay Date**
 - 4. Information to be Included in a Payroll Submission**
 - 5. Payroll Corrections**
 - 6. Filing a Payroll Submission by Online Form**
-

1. Introduction

Since 1st January 2019, employers are required to submit statutory payroll information to Revenue in a Payroll Submission on or before the day the employee is paid. For example, where an employee is paid weekly, the employer is required to make a Payroll Submission to Revenue each week on or before pay day.

2. Payroll Submission

A Payroll Submission must be submitted to Revenue for any payment made to an employee or office holder on or before the pay date.¹ An employer can submit the Payroll Submission using one of the 3 methods of communicating with ROS (i.e. by direct payroll reporting, file upload or ROS online). Where the employer uses payroll software it is likely that the employer will avail of the direct payroll reporting option to seamlessly transfer the information from the payroll software directly to ROS. Those employers who do not use payroll software generally avail of the ROS Online where they are required to input the information directly in ROS.

3. Definition of Pay Date

Revenue considers the “Pay Date” to be the date on which the funds are made available to the employee. These dates can vary for employees (e.g. weekly, fortnightly, monthly, etc.) and will depend on the method in which the employee is paid as follows:

- Cash – the date it is given to an employee
- Cheque – the date on the cheque
- Credit Transfer – the date that the funds are scheduled to be available in the employee’s bank account. If the pay date falls on a non-banking day, this scheduled date will still be regarded as the pay date where the funds are made available on the previous banking date (e.g. if the scheduled pay date falls on Monday 1st January 2024, this date will still be regarded as the pay date where the funds are made available to the employee on Friday 29th December 2023). In this situation the employer should record the normal pay date (i.e. 1st January 2024) in the 2024 version of the payroll software to ensure that the liabilities in that Payroll Submission are recorded in the Monthly Return for January 2024.

¹ Income Tax (Employments) Regulations 2018. Regulation 10. S.I. 345 of 2018

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Where the funds are made available prior to the previous banking date, Revenue deem the liabilities arising on these payments to fall due in the month in which they are paid (e.g. if the scheduled pay date falls on Monday 1st January 2024 but the employee is actually paid on Thursday 28th December 2023, the liabilities arising on this payment should be collected in the December Monthly Return). If the employer wishes to pay the employee on 28th December 2023, it should be processed in the 2023 version of the payroll software. The employee would not be entitled to the Week 53 concession in this scenario as it is the change in the employee's pay day which is giving rise to the 53rd payment in 2023. **Note:** Many payroll software packages reject a pay date which is outside the current tax year as it is not accepted in ROS.

4. Information to be included in a Payroll Submission

While most employees will continue to be taxed on the Cumulative Basis based on a cumulative RPN issued by Revenue; only the pay and deductions relating to the current pay period will be returned in the Payroll Submission, as opposed to the cumulative pay and deductions. The entries on a Payroll Submission are outlined as follows:

Data Item	Description
Payroll Run Reference	Used to identify the payroll that the Submission relates to (e.g. ABC Ltd - Week 1; ABC Ltd - Week 2; etc.).
First Name	
Family Name	
Employee PPSN	Used to identify the employee to which the Submission relates.
Address	An address will be mandatory if the employee's PPSN is not available. It is to assist Revenue allocating payments to the correct individual in the absence of a PPSN.
Date of Birth	A date of birth will be mandatory if the employee's PPSN is not available. It is to assist Revenue allocating payments to the correct individual in the absence of a PPSN.
Employment ID	This is a unique identifier provided by the employer for each separate employment for an employee. It will be used to distinguish between multiple employments for an employee with the same employer, and to distinguish different employments where an employee ceases and recommences employment with the same employer. This is a required field where the employee's PPSN is available.
Employer Reference Number	Employee identifier which must be populated in the absence of a PPSN and remain unchanged in all Submissions until the employee PPSN is available. It will be used to uniquely identify the employment of an individual where a PPSN is not included.
Employment Start Date	This is only required in the first submission a new employee is paid, or if a correction is being made to the start date in a subsequent Submission. It will be used by Revenue to determine if tax credits or SRCOP need to be reallocated to this new employment.
Date of Leaving	Should be reported in the Submission for the period the employee leaves or is deceased, or the employer ceases to trade. It will be

	used by Revenue to determine if tax credits or SRCOP need to be reallocated from this employment to another employment.
Pay Date	Date the employee is paid. Refer to Section 3 above for more information. The pay date will be used to determine which Monthly Return the liabilities relate to.
Pay Frequency	Options include weekly, fortnightly, monthly, four-weekly, twice-monthly, quarterly, bi-annual, annual, other. ‘Other’ should be used where the payments are unpredictable.
RPN Number	This is mandatory when the RPN is used. It determines that the correct instructions are being operated by the employer.
SRCOP this period	Amount of SRCOP available for use in the tax calculation. Where the employee is taxed on a Week 1 Basis, this will be the SRCOP for the pay period. If the employee is taxed on the Cumulative Basis, this will be the cumulative SRCOP up to and including the current pay period. This is mandatory when the RPN is not used.
Tax Credits this period	Amount of tax credits available for use in the tax calculation. Where the employee is taxed on a Week 1 Basis, this will be the tax credits for the pay period. If the employee is taxed on the Cumulative Basis, this will be the cumulative tax credits up to and including the current pay period. This is mandatory when the RPN is not used.
Income Tax Calculation Basis	Cumulative, Week 1 or Emergency. This is mandatory when the RPN is not used.
Exclusion Order	This indicates that the Employer does not have to deduct Income Tax for the Employee. This will be either ‘True’ or ‘False’. This is mandatory when the RPN is not used.
Gross Pay	This is the employee’s gross pay of any kind, including notional pay and share based remuneration, and before any pension contributions or salary sacrifice deductions are made.
Pay for Income Tax	This is the employee’s gross pay as reduced by an approved salary sacrifice or allowable deductions such as pension contributions or income continuance contributions; Additional Superannuation Contribution (ASC) payable by public servants; relevant reliefs such as SARP (Special Assignee Relief Programme).
Income Tax Paid	Tax deducted or refunded in this employment. Negative if tax refunded.
Pay for Employee PRSI	This is gross pay less any approved salary sacrifice.
Pay for Employer PRSI	This is Pay for Employee PRSI purposes less any share-based remuneration or ASC payable by public servants.
Employee is Exempt from PRSI in Ireland	This will be either ‘True’ or ‘False’. It allows for the filing of Submissions for employees who are exempt from paying PRSI in Ireland.
PRSI Exemption Reason	If the employee is exempt from PRSI, a reason must be included. Options include: <ul style="list-style-type: none"> • A1 Portable Document from EU Member State • Certificate of coverage under Social Security Bilateral Agreement • Notification of exemption for posted workers other than above • Employment of certain family members • Under 16 years of age

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	<ul style="list-style-type: none"> Employment on certain social welfare schemes Other
PRSI Class and Subclass	A PRSI Class and subclass is required if the employee is not PRSI exempt. Where necessary, more than 1 PRSI class can be recorded for the same employee.
Insurable Weeks	Number of insurable weeks for each PRSI class accrued in this pay period.
Employee PRSI Paid	Employee PRSI deducted in this pay period. Negative if PRSI refunded.
Employer PRSI Paid	Employer PRSI deducted in this pay period. Negative if PRSI refunded.
Pay for USC	This is gross pay less any approved salary sacrifice.
USC Status	Options include Ordinary or Exempt
USC Paid	USC deducted or refunded in this employment. Negative if USC refunded.
Gross Medical Insurance paid by Employer	Gross Medical Insurance paid by employer for the employee (i.e. the amount which was a taxable benefit). This field will be cross-checked by Revenue when an employee claims his medical insurance tax credit.
Pension Tracing Number	The format of the pension tracing number is “PBXXXXXX”. E.g. PB123456. This is issued by the Pensions Authority and should be provided when the employee joins or changes an occupational pension scheme. Multiple numbers can be recorded where the employee is a member of more than 1 scheme. It does not apply to PRSAs or public sector pension schemes.
Amount contributed by Employer to retirement benefit scheme	Amount should be included where applicable.
Amount of tax allowable employee contribution to retirement benefit scheme	Amount should be included where applicable. This refers to regular pension contributions only which qualify for tax relief. (Note: AVCs should not be reported in this field).
Amount contributed by Employer to PRSA scheme	Amount should be included where applicable. For 2023 , any employer contribution to an employee’s Pan-European Personal Pension (PEPP) should also be recorded in this field.
Amount of tax allowable employee contribution to PRSA scheme	Amount should be included where applicable. This refers to the amount which qualifies for tax relief. For 2023 , any tax allowable employee contribution to a Pan-European Personal Pension (PEPP) should also be recorded in this field.
Amount of tax allowable employee contribution to RAC scheme	Amount should be included where applicable. This refers to the amount which qualifies for tax relief.
Amount contributed by Employee to AVC scheme	Amount should be included where applicable. This refers to the amount which qualifies for tax relief. (Note: AVCs should be reported in this field only and not reported as a contribution to a retirement benefit scheme).

ASC amount contributed by employee to public service pension scheme	Amount of additional superannuation contribution (ASC) contributed by employee (public servant) to public service pension scheme.
Share Based Remuneration	This is share-based remuneration consisting of shares in the employer company or a company which controls the employer company that is included in Gross Pay.
Taxable Benefits	This is the taxable value of non-cash benefits (for example, private use of a company car, free or subsidised accommodation, medical insurance, preferential loans, etc.), other than share-based remuneration, that is included in Gross Pay.
Taxable Lump sum	This refers to the taxable element of a termination payment included in ‘Pay for Income Tax’. This is the amount of an ex-gratia termination payment which exceeds the Basic Exemption, Increased Exemption, Standard Capital Superannuation Benefit (SCSB) Exemption.
Non-Taxable Lump sum	This refers to the amount of any non-taxable termination payment (i.e. any amount relieved from tax by virtue of the Basic, Increased or SCSB Exemption; or payment due to the death, injury or disability of an employee; but excluding statutory redundancy).
LPT Deducted	Local Property Tax deducted from the employee this pay period. A refund of LPT cannot be processed through payroll (i.e. this amount cannot be negative).
Director	Options include: Proprietary Director or Non Proprietary Director. A proprietary director is someone who controls directly or indirectly more than 15% of the company’s ordinary share capital.
Shadow Payroll Indicator	This should be set to True where a shadow payroll is being operated for an employee. It will indicate to Revenue an increased likelihood of corrections for this employee.
Expected number of pay periods in a full year	Options include 12, 13, 14, 26, 27, 52 or 53. This will be used by Revenue to determine whether a Week 1 or Cumulative RPN should be provided when an employee moves jobs.
Pay Period	<p>For monthly pay it is the month number, for fortnightly pay it is the fortnight number and for weekly pay it is the week number, etc. in which the payment is made. This field should be populated regardless of whether the employee is taxed on the Cumulative, Week 1 or Emergency Basis.</p> <p>It will be used by Revenue to:</p> <ul style="list-style-type: none"> • Assist with the accuracy of in-year reconciliations for employees which are performed to determine if tax credits and SRCOPs are allocated to best effect, and • Accurately determine if a ‘Week 1’ Basis can be removed.

Notes to the above table:

- An Employer Reference Number will be required where an employee’s PPSN is not available and an Employment ID will be required where the PPSN is available. Where an employee has been paid for one or more pay periods without a PPSN and a PPSN becomes available in a later pay period, both the Employer Reference Number and the Employment ID should

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be included in the first Payroll Submission which contains the PPSN. This is to enable Revenue to link the details for the initial pay periods (when no PPSN was available) with subsequent pay periods for that employee. There is no requirement to include the Employer Reference Number thereafter, but employers can continue to submit it along with the Employment ID if they so wish.

- While the Regulations state that an employer is obliged to notify Revenue of the date of cessation of employment of an employee no later than the date of cessation², Revenue has indicated that a common-sense approach will be expected. Where the employer will be making a final payment to the employee in the next payroll run, notification at that stage would be acceptable. However, where this is not imminent, then the employer needs to notify Revenue when he knows that the employment has ceased. For example, where an employee ceases employment on the 10th of the month, but the final payment won't be made until the normal monthly pay day (say 25th of the month), it will be acceptable to include the leave date on the Payroll Submission which will be submitted on or before the 25th of the month.
- The inclusion of the RPN number enables Revenue to identify if the employer is using the most up to date RPN. Where the RPN Number is included in the Payroll Submission, there is no requirement for the employer to record the amount of SRCOP or tax credits used in the calculation of income tax. Where the RPN Number is not present in the Payroll Submission (e.g. where the employer reverts a cumulative RPN to the Week 1 Basis in a case of hardship or where the employer is required to operate Emergency tax), the employer will be required to include the SRCOP and tax credit which was used in calculating the income tax liability and indicate what basis of tax was used (i.e. Cumulative, Week 1 or Emergency Basis).
- Where the RPN Number contained in the Payroll Submission is not the most up to date RPN, the employer will receive a warning to this effect when the Payroll Submission is submitted to ROS. While the Payroll Submission will be accepted with the warning issued, employers should be aware that continuous warnings may lead to a Revenue compliance intervention.
- Gross Pay (including notional pay) must be recorded for each pay period before any deductions are made. This means that any Revenue approved salary sacrifice (e.g. to purchase a travel pass, a bicycle under the Cycle to Work scheme or shares under an Approved Profit Sharing Scheme (APSS)), will have to be recorded as an allowable deduction or reduction from the employee's gross pay (i.e. it qualifies for relief from income tax, USC and PRSI). It is not acceptable to simply record a reduced gross pay amount. For example, where a discretionary bonus is sacrificed to buy shares in an APSS, the bonus should be recorded as part of the employee's gross pay with the corresponding salary sacrifice being deducted to calculate the pay for Income tax, USC and PRSI purposes.
- It will be possible to include more than 1 PRSI Class for an employee where the employee is in receipt of two or more payments which are liable to PRSI at different classes (e.g. where an employee is in receipt of both a salary payment and a pension payment on the same payslip). An alternative solution would be for the employer to set up two payroll records for this employee with separate Employment IDs and process the pension under 1 Employment ID and the salary through the other Employment IDs.

² Income Tax (Employments) Regulations 2018. Regulation 17. S.I. 345 of 2018

- The reporting of taxable and non-taxable termination payment is to comply with a statutory reporting obligation and will be used by Revenue to ensure an employee does not exceed his lifetime limit of tax-free termination payments (currently €200,000). However, where a tax free termination payment is made to an employee due to the death, injury or disability of the employee, an employer will still be required to notify Revenue of the extent of the injury or disability before 15th February following the end of the year which can be done via MyEnquiries.
- A Payroll Submission will accept negative pay, tax, USC and PRSI values to facilitate employers who need to record the recovery of an overpayment of wages. For example, where an employer recovers an overpayment of wages in the current tax year, it will be possible for the employer to recover the net amount of the overpayment from the employee and record negative pay, tax, USC and PRSI in order to reverse these amounts. It will not be possible for an employer to record a negative LPT amount.

The above information will be updated on the employee's tax record which the employee can access by logging on to MyAccount. Employees can access this information at any time and they will also be able to print off an end of year certificate which will contain pay and statutory deductions from all employments during that tax year.

5. Payroll Corrections

Overpayments and underpayments frequently occur in payroll. Revenue stated that employers should adopt a "follow the money" approach when dealing with overpayments and underpayments. For example, if an employee was overpaid last week, and the employer recovers the overpayment this week (or vice versa where the employee was underpaid last week and the balance is paid this week), this is not a correction per se. The employer should simply report the amounts in any given pay period.

For example:

Week No:	Gross Pay	Comment
1	€500	Normal Wages
2	€600	Includes overpayment of €100
3	€400	ER recovered overpayment of €100

If an employee was underpaid, and the employer agrees to resolve the issue by giving the employee an additional payment in advance of the next pay period, the fact that the employer makes an additional payment, this in turn requires the employer to make a Payroll Submission in respect of this payment.

Certain reporting errors can be corrected in a current Payroll Submission where they involve non-financial information. For example, corrections to the employee's:

- First name, family name, address and date of birth,
- Employment start date,
- Pay frequency,
- Income tax calculation basis (i.e. cumulative, week 1),
- PRSI Exemption Reason,
- PRSI Class and Subclass,

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- Number of Insurable weeks,
- USC Status,
- Expected number of pay periods in a full year

However, where a previous Payroll Submission contains an error in respect of any of the following fields, the employers should correct these previous Payroll Submissions:

- Employee PPSN,
- Employer Reference Number,
- Employment ID,
- Date of Leaving,
- Pay date,
- RPN number
- SRCOP and tax credits this period,
- Exclusion Order,
- Employee is exempt from paying PRSI in Ireland,
- Pension Tracing number
- Reporting error in respect of any figure submitted for gross pay; pay for income tax purposes; income tax paid; pay for employee or employer PRSI; employee or employer PRSI paid; Pay for USC; USC paid; gross medical insurance paid by employer; amount contributed by employee and employer to a retirement benefit scheme, PRSA, RAC or AVC; share based remuneration; taxable benefits; taxable lump sum; non-taxable lump sum; LPT deducted; shadow payroll indicator; and director.

Errors can be corrected by amending a previous submission. Each payslip that is generated in payroll software is submitted to revenue as a “Line item” in a Payroll Submission (i.e. a Payroll Submission for 500 employees will have 500 line items). Payroll software should facilitate an employer to amend an original line item from a previous Payroll Submission and replace it with a new line item. The employer should submit the corrected Payroll Submission to Revenue. Once this is received by Revenue, any necessary amendments to the liabilities will be reflected in the employer’s Monthly Statement.

For example, an employee was paid a salary of €1,000 in Week 1. He was also in receipt of a benefit in kind (notional payment) of €250. On the Payroll Submission for Week 1, the employer incorrectly recorded the gross payment for the employee as €1,000. As the gross pay was incorrectly recorded for Week 1 (gross pay includes notional pay), the employer is required to amend the Payroll Submission for Week 1 and record the gross pay as €1,250.

Reporting errors could also include an employee being omitted from the Payroll Submission although the employee was paid. This line item would need to be submitted to Revenue. A reporting error could also include an employee being incorrectly included in the Payroll Submission even though they had not been paid by the employer. This line item would need to be deleted.

Corrections should be made before the Return due date (14th of following month) to avoid penalties.

Note: Employees can view the pay, Income tax, PRSI, USC and LPT reported by their employer on each Payroll Submission in myAccount. Where an employee has any queries regarding the

pay and statutory deductions reported in myAccount, they should initially contact their employer. If employees continue to have concerns, they should contact Revenue via MyEnquiries.

6. Filing a Payroll Submission by Online Form

The following screenshots illustrate how an employer files a Payroll Submission by online form on ROS.

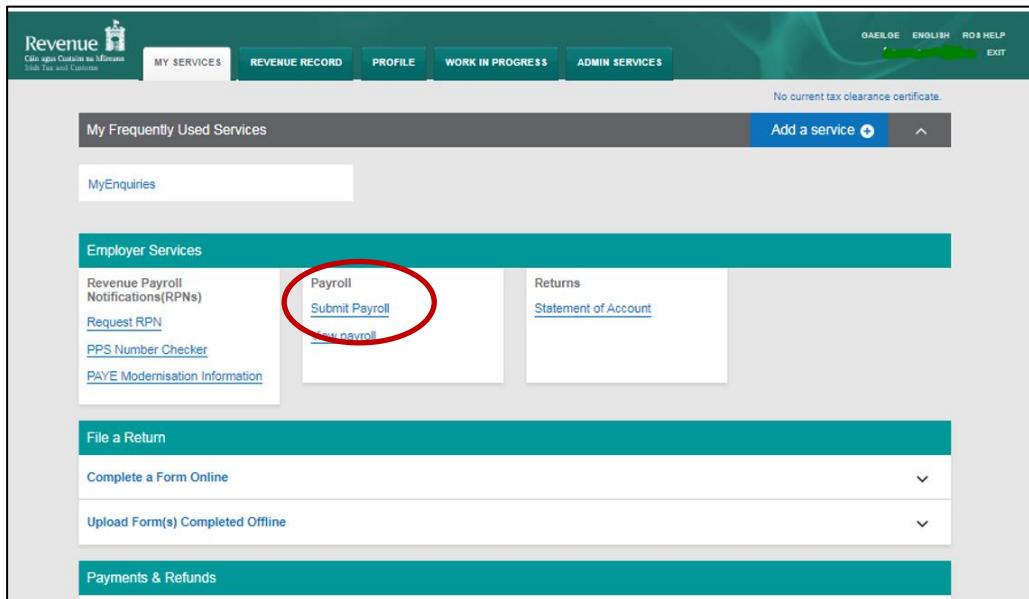
For the purpose of this text we are focusing on the option to file a Payroll Submission by online form. This option is primarily used by those who do not use payroll software. Those employers who use the Direct Payroll Integration method of filing Payroll Submissions do so from within their payroll software and will not encounter the ROS screens outlined below.

An employer is required to log into ROS on the Revenue homepage. He should select the digital certificate required for the relevant payroll and enter his password.

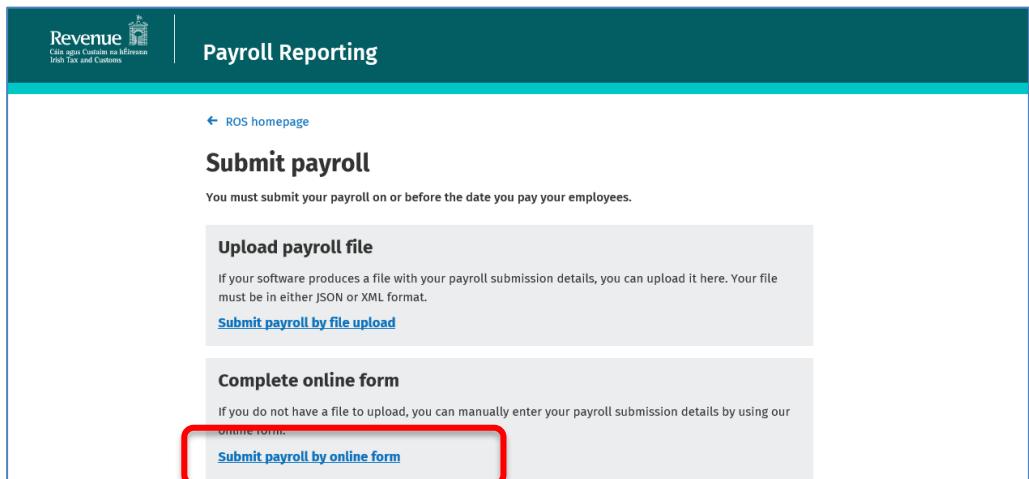
The screenshot shows the Revenue Online Service (ROS) Secure Login page. At the top left is the Revenue logo with the text 'Cais agus Cúntaí na hAireann' and 'Irish Tax and Customs'. At the top right are links for 'GAEILGE | ENGLISH' and 'Return to Revenue.ie'. The main area has a blue header 'ROS Secure Login'. Below it is a yellow warning box containing the text: 'Please be aware that ROS sub-user certificates do not have access to the ROS Revenue Record. Admin users still have full access. We are working on resolving this issue.' To the right of the warning is a large green section titled 'Revenue Online Service' with a brief description: 'Revenue Online Service (ROS) enables you to view your own, or your client's, current position with Revenue for various taxes and levies, file tax returns and forms, and make payments for these taxes online in a variety of ways.' Below the description is a 'Useful Links' section with several hyperlinks: 'View Latest Revenue News', 'EU VAT Customers', 'ROS Offline Application', 'ROS Developer Support', 'ROS Compatible Third Party Software', 'Digital Certificate for Emails', and 'Register for ROS'. On the left side of the main form, there are three steps: 1. Select Certificate (dropdown menu showing '3502846mh'), 'Manage My Certificates' link, and a '2. Enter Password' field with masked input. 2. 'Change password' and 'Reset Login' links. 3. 'Login' button with a 'Login to ROS' link next to it. A 'ROS Help' link is also present.

This will bring the user to the “My Services” page. Under Employer Services, the user should select Submit Payroll.

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The user is brought to the Submit Payroll screen which provides the user with the option to “Upload payroll file” or “Complete online form”.



Once the user clicks on link for Submit payroll by online form, he is brought to the Select an employee screen which provides the user with the option to select the employee he wants to make the Payroll Submission for.

Revenue
Cais agus Cúnta an Mhára
Irish Tax and Customs

Payroll Reporting

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Select an employee

Please select an employee to whom a payment is being made. If you have a new employee, you will first need to request an RPN in order to make the correct deduction.

[I have a new employee.](#)

PPS number	Employee name	Employment ID	Employment start date	Action
1234567T	Paddy O'Brien	-	01/01/2018	Select
9876543R	Mary O'Brien	-	01/01/2018	Select

[I don't have a PPS number for my employee →](#)

[Revenue Home](#) | [Accessibility](#) | [System Requirements](#)
[Terms & Conditions](#) | [Privacy Policy](#) | [Certification Policy Statement](#) | [Certification Practice Statement](#)
Language: [Gaeilge](#)

The user should then record the pay frequency and number of pay periods in the year and click next.

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Irish Tax and Customs

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Select a pay frequency

Please input the pay frequency and expected number of pay periods in the year for this employee.

Employee name:

PPS number:

Employment ID:

Pay frequency:

Number of pay periods: [\(i\)](#)

[Revenue Home](#) | [Accessibility](#) | [System Requirements](#)
[Terms & Conditions](#) | [Privacy Policy](#) | [Certification Policy Statement](#) | [Certification Practice Statement](#)
Language: [Gaeilge](#)

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 **Payroll Reporting**

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Submission item

Revenue Payroll Notification (RPN) [View RPN](#)

RPN Number	1	RPN Issue date	21/08/2018
Income tax calculation basis	Cumulative	Yearly Tax Credits	€3,300.00
Tax Rate 1	20.00%	Yearly standard rate cut off point	€34,550.00
Tax Rate 2	40.00%		

Please complete/update all relevant sections below.

Employee details

Employee name	JOE MURPHY	PPS number	1245274P
Employment ID	1	Employer reference	-
Employment start date	01/01/2014	Date of leaving	-
Pay frequency	Monthly	Shadow payroll	No
Directorship	None		

[Update](#) I confirm these details are correct

Pay & deductions

Pay date	16/08/2018	Gross pay	€2,500.00
Pay for Income tax	€2,500.00	Income Tax paid	€137.50
Pay for USC	€2,500.00	USC Paid	€63.92
PRSI Class 1	A1	Insurable weeks 1	4
Pay for Employee PRSI	€2,500.00	Employee PRSI paid	€100.00
Pay for Employer PRSI	€2,500.00	Employer PRSI paid	€268.75
		LPT Deducted	€0.00

[Update](#) I confirm these details are correct

Other pay & deductions

Gross medical insurance paid by employer	-	Share based remuneration	-
Taxable benefits	-	Non-taxable lump sum	-
Taxable lump sum	-	Employee contribution to RBS scheme	-
Pension tracing number 1	-	Employee contribution to PRSA scheme	-
Employer contribution to RBS scheme	-	Employee contribution to RAC scheme	-
Employer contribution to PRSA scheme	-	Employee contribution to AVC scheme	-
Employee contribution to RAC scheme	-		
Employee contribution to ASC scheme	-		

[Update](#) I confirm these details are correct

[← Back](#) [Save →](#)

In the above ‘Submission Item’ screen, the employer should click on the ‘Update’ link to update the relevant information in each section. A pop-up screen will appear as follows where the information can be updated.

Pay & deductions

Pay date (i)

DD/MM/YYYY

X

Gross pay (i)

RPN number (i)

Pay for Income Tax (i)

Income Tax paid (i)

USC status

Ordinary Exempt

Your employee is deemed ordinary in the paying of Universal Social Charge (USC) for the current year if their total estimated income, excluding all payments from the DEASP, will exceed €13,000.

Pay for USC (i)

PRSI class, subclass & insurable weeks

PRSI class & subclass	Number of insurable weeks	Action
AL	1	Remove

[Add additional PRSI class, subclass & number of insurable weeks](#)

Pay for employee PRSI (i)

Employee PRSI paid (i)

Pay for employer PRSI (i)

Employer PRSI paid (i)

LPT deducted (i)

[Cancel](#)
[Save →](#)

Once the initial submission is made for an employee, the information is carried forward to subsequent submissions which should be updated as necessary. Once the relevant section has been updated, the user should click the box to confirm these details are correct.

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Where the employer is satisfied that they have updated the relevant information for the employee, and saves the submission details for that employee, they are presented with the following screen. This screen provides the user with a summary of the pay and statutory deductions recorded for that employee. The user now has the option to ‘Add additional submission items’ (i.e. record the pay details for another employee), amend or delete the information already input, or submit the payroll to Revenue.

PPS number	Employee name	Employment ID	Pay date	Gross pay	Income Tax	PRSI	USC	LPT	Total deductions	Actions
1245274P	JOE MURPHY	1	16/08/2018	€2,500.00	€137.50	€368.75	€63.92	€0.00	€570.17	Amend Delete

[Add additional submission items →](#)

[Submit payroll →](#)

[Clear filter](#)

Once the payroll is submitted to Revenue, the following acknowledgement screen is presented which allocates a payroll run reference number to the submission.

Your payroll run reference is: **PR-20180828-0834050**

Your submission ID is: **1**

You can view details of your payroll run and submission using the "View payroll" screens.

You may wish to print this screen to keep a record of your payroll run reference and submission ID for future correspondence.

[Return to ROS](#) [Print screen](#) [View payroll run](#)

CHAPTER 27

Returns and Payments

- 1. Employers' Obligations during the Tax Year**
 - 2. Monthly Return**
 - 3. Return Due Date and Payment Date**
 - 4. Payment Methods**
 - 5. Interest, Assessments and Penalties**
 - 6. Records**
-

1. Employers' Obligations during the Tax Year

In order to comply with his statutory obligations and to ensure that the correct amount of tax and USC is deducted from an employee each payday, each employer should ensure that:

- The correct PPSN is used for each employee,
- A PAYE, PRSI, USC and LPT record is set up for each employee (including directors and those in receipt of an occupational pension) for the tax year,
- The most up to date RPN is used by the employer when calculating each employee's income tax and USC (Revenue generally issue RPNs in December in advance of the new tax year).
- If an RPN is not received for an employee, the employer is obliged to operate the Emergency Basis of tax.
- Make a Payroll Submission to Revenue on or before each pay date.
- Report employee's commencement and cessation dates to Revenue.
- If there is a pay date on 31st December (or in the case of a leap year the 30th or 31st December) an employer may have to process a week 53 payroll or fortnight 27 payroll.

2. Monthly Return

Since 1st January 2019, all employers are required to submit a statutory Monthly Return of the Income tax, PRSI, USC and LPT liabilities which were deducted from all employees in a calendar month.¹

Following the end of each calendar month, Revenue will make a pre-populated Statement available to each employer containing the total Income tax, PRSI (aggregate of employee and employer PRSI), USC and LPT liabilities for that month based on the aggregate totals from the Payroll Submissions received from the employer which contained a pay date within that month. The pre-populated Statement should be available in ROS from the 5th of the following month. Where no payments were paid during a calendar month, a nil Statement will be made available by Revenue.

¹ Taxes Consolidation Act 1997, Section 985G as inserted by Finance Act 2017

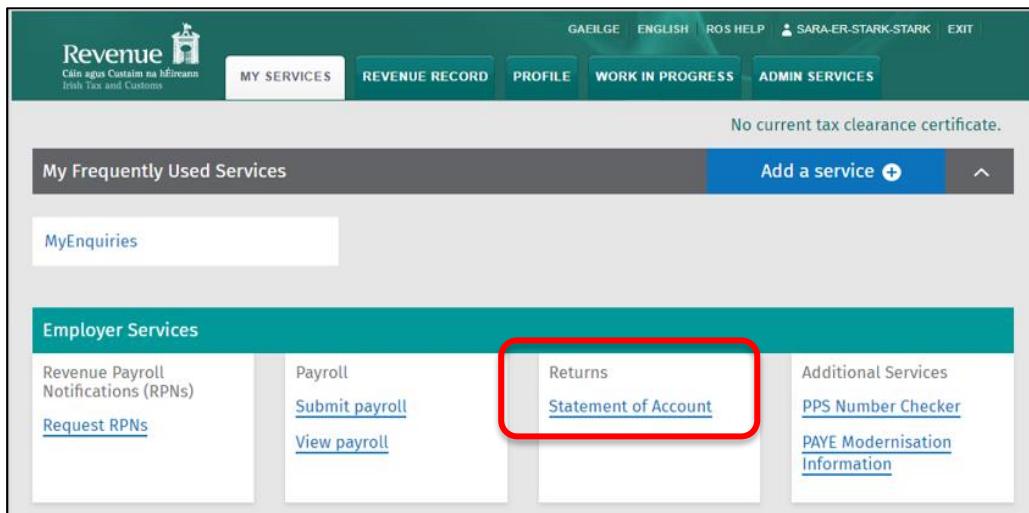
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It is important to note that the Statement is comprised of all the payments notified to Revenue with a pay date occurring within the month, which will not necessarily equate to the Payroll Submissions made during that month.

For example, an employer filed a Payroll Submission on 31st January which contained a pay date of 3rd February. The liabilities contained in this Payroll Submission will form part of the February Statement as the pay date was in February.

Some payroll software packages may allow the user to set different pay dates for different employees within the same pay run. In this instance, where the pay dates span from 1 calendar month to the next month, the liabilities from this Payroll Submission will be split out accordingly. For example, an employer filed a Payroll Submission on 29th January which indicated that 10 employees were paid on 30th January and 5 employees were paid on 3rd February. The liabilities for the 10 employees will form part of the January Statement and the liabilities for the 5 employees will form part of the February Statement.

The employer must log into ROS to access the Statement by clicking on “Statement of Account” which appears in the Employer Services section.



This brings the User to the ‘Online Statement of Account’ screen which displays the total liability for the current Monthly Statement and the liabilities of recent Monthly Returns.

Tax Type Details

PAYE-EMP

Registration Details

Tax Type	Reg No.	Status
PAYE-EMP	3390236PH	Return Due & Payment Due

Period Details

The period details breakdown/search will show information from the previous seven complete tax years and the current tax year and is applicable to PAYE-EMP only.

Search

Start Date	End Date	Payment Due Date	Liability €	Collections €	Balance €	Status	Action
↓ 2019 Action Required							
→ Monthly Statement	01/04/2019	30/04/2019	414.00 *	0.00	0.00	Due	View/Accept
→ Monthly Return	01/03/2019	31/03/2019	23/04/2019	570.00	0.00	570.00 Accepted	View Return or Make Payment
→ Monthly Return	01/02/2019	28/02/2019	23/03/2019	0.00	0.00	0.00 Accepted	View Return
→ Monthly Return	01/01/2019	31/01/2019	23/02/2019	100.00	0.00	100.00 Deemed	View Return or Make Payment

By clicking on the “view/accept” link for the Monthly Statement, the employer can then proceed to view or accept the Monthly Statement. The Statement shows a breakdown between the amount of Income Tax, PRSI, USC and LPT due for the period based on the Payroll Submissions received by Revenue which contained a pay date within that month. The PRSI liability refers to the combined employee and employer contribution.

The employer should reconcile the figures in the Statement to the figures he holds in his payroll records or payroll software. Where the employer agrees with the liabilities contained in the Statement, he should tick the Declaration checkbox to confirm he agrees with the Summary Details and click Submit which brings the employer to the Sign and Submit screen. Once the employer signs and submits the Return he will be brought to the Acknowledgement Screen where he will have the option to pay now (using the available payment methods in ROS which are credit card, debit card, credit transfer or ROS Debit Instruction) or pay later.

Where the employer identifies discrepancies, these should be corrected before the Return Due Date. Discrepancies should be corrected by reviewing the liabilities in the Payroll Submissions which make up the Monthly Statement and making the necessary corrections to the Payroll Submissions. The correction of a Payroll Submission will result in a revised Statement being made available.

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The screenshot shows the 'Monthly Employer PAYE Return Submission' page. At the top left is the Revenue logo. Below it, the page title is 'Monthly Employer PAYE Return Submission (3390236PH)'. A note says 'This information is accurate as of 30/04/2018 10:43:14.' The page is divided into several sections:

- Summary Details:** Shows a table of tax amounts:

Income Tax	€ 250.00
PRSI (Employer & Employee)	€ 89.00
USC	€ 55.00
LPT	€ 20.00
Total	€ 414.00
- Period Details:** Shows the period as '01/04/2019 - 30/04/2019', status as 'DUE', and due date as '14/05/2019'.
- Payroll Details:** Notes that only payroll figures with pay dates in the selected month are included in the period's totals. It provides links to download the XML or JSON return summaries.
- Declaration:** A box containing a checkbox and a statement. The checkbox is labeled 'I agree with the summary above.' The statement is: 'The acceptance of this return certifies and declares that all the payroll data you submitted is complete and true and is an accurate reflection of the emoluments made to your employees in this period.'
- Submit:** A blue button with a white arrow icon.

A Monthly Statement will be a ‘Deemed Return’ on the Return Due Date where it has not been accepted by the employer. Where an employer is satisfied that all Payroll Submissions have been accurately recorded by Revenue at the time of submission, the employer may not be required to log into ROS as the Monthly Statement will automatically become the Return on the due date regardless of whether it has been accepted by the employer or not. Payroll software may be capable of carrying out a Return reconciliation to ensure the accuracy of the figures.

For those employers who have been granted an exemption from electronic filing, a paper Monthly Statement is issued automatically by the Collector General’s office each month (or quarter). Paper returns should be sent to the Collector General’s office in Limerick accompanied by a cheque, or it can be paid through any bank using the credit transfer slip attached to the bottom of the Monthly Statement.

3. Return Due Date and Payment Date

In all cases (i.e. for monthly, quarterly or annual remitters) the **Return Due Date** is the 14th of the following month.

While the Return Due Date is the 14th of the following month, the **Payment Date** is extended to the 23rd of the following month (or 23 days following the end of each quarter) where it is paid and filed online.

This is summarised as follows:

Remitter Type	Return Filing Frequency	Return Due Date	Payment Frequency	Payment Due date
Monthly	Monthly	14 th of following month	Monthly	14 th of following month (23 rd for ROS users who pay and file online)
Quarterly	Monthly	14 th of following month	Quarterly	14 days after the end of each Quarter (23 days for ROS users who pay and file online)

3.1 Quarterly Remitters

Where an employer's annual Income Tax, PRSI, USC and LPT liability is less than €28,800 he has the option of making the **payment** on a quarterly basis,² within 23 days following the end of the quarter, where paid and filed on ROS. Otherwise the payment must be made within 14 days of the end of the relevant quarter.

- The payment for the quarter January to March is due by 14th / 23rd April
- The payment for the quarter April to June is due by 14th / 23rd July
- The payment for the quarter July to September is due by 14th / 23rd October
- The payment for the quarter October to December is due by 14th / 23rd January

Note: The Return Due Date remains on 14th of the following month. Quarterly remitters will be required to submit a Payroll Submission on or before each day an employee is paid, file monthly returns, but they still have the option to make the payment on a quarterly basis.

4. Payment Methods

As outlined in Section 2 above, in the Acknowledgement Screen which appears once the employer has signed and submitted the Return, he has the option to pay now or pay later. Where the employer opts to pay later this can be done:

- a) In the Statement of Account screen where the employer accepted the Monthly Statement, he also has the option to click on "Make Payment" in respect of the appropriate Return. This brings the user to the enter tax amounts screen which is pre-populated with the amounts owed for that period based on the Payroll Submissions Revenue have on file for this period. The amounts can be edited if necessary or the user can proceed to make payment. The available payment methods include debit card, credit card, credit transfer, ROS Debit Instruction; or
- b) By selecting the "Submit a Payment" option from the Payments and Refunds section of the My Services page. The Submit a Payment section expands to allow the user select Tax Payment/Declaration on the Payment type dropdown list, then select PAYE-Emp from the tax types list and select Post-2019 from the final dropdown list and click on make payment to proceed. The user then selects period they wish to make a payment for. The amounts for the period may be pre-populated based on the Payroll Submissions Revenue have on file for this period. The payment options available are as outlined above.

² Income Tax (Employments) (Consolidated) Regulations 2001, Regulation 29, as amended by Income Tax (Employments) Regulations 2003 & 2008

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4.1 Payment by Direct Debit

It is possible for employers to pay their Income Tax, PRSI, USC and LPT liabilities in monthly instalments by direct debit by agreement with the Collector General's office. Although referred to as a direct debit, it may be more appropriate to call it a standing order as it is the employer who controls the amount being paid.

The employer must estimate his Income Tax, PRSI, USC and LPT liability for the year, usually based on the previous year's liability as adjusted for any change in circumstances. This amount can then be paid in monthly instalments which must be paid before the Payment due date for that month (i.e. the payment for January must be paid by 23rd February).

Where the actual liability for the year (i.e. the aggregate liabilities of each month of the year) is greater than the amount paid under the direct debit agreement, the balance must be paid in the payment for December (i.e. by 23rd January).

The amount paid each month should be sufficient to cover 90% of the employer's overall liability. Where the total amount of monthly direct debits paid by the employer in a year is less than 90% of the actual tax due, then the agreement is deemed not to have effect, and the amount of tax due for each month is due and payable on the due date for that month. This may give rise to an interest charge for the employer.

The direct debit payment method is restricted to those employers whose monthly liability does not exceed €25,000 per month. Direct debit payments can be set up and managed through ROS.

It is possible for all employers to set up a variable direct debit payment plan. The variable direct debit will collect the outstanding balance for the current period only. Collection will take place on the third last working day of the month and interest may be charged where a direct debit is returned unpaid.

5. Interest, Assessments and Penalties

The interest payable on overdue Income Tax, PRSI, USC and LPT is calculated at a daily rate of 0.0274%. Interest is chargeable from the Payment due date for the month to which the liabilities relate.³

Where the employer does not pay the liabilities in respect of a Monthly Return by 23rd of the following month or quarter, and interest is charged for late payment, it will be calculated as if the Monthly Return was due on the 14th of the month, not the 23rd. Interest on a late payment is calculated as follows:

$$\text{Amount of late payment} \times \text{Number of days the payment is late} \times 0.0274\%$$

In practice, Revenue tends not to charge interest where the payment is made before the end of the month in which it is due. If the payment is made after the due month then interest is charged from the day after the due date (i.e. from the 15th of the month in which it was due). However, it is best practice to submit returns before their deadline.

³ Taxes Consolidation Act 1997, Section 991

5.1 Assessments

Where Revenue believe that an employer has not submitted a Monthly Return or the Return was made but it does not include the total amount of Income Tax, PRSI, USC and LPT that was due, Revenue may make an “Assessment” of the amount due. The purpose of the assessment is to quantify the amount due and generate a demand for payment.

In practice, PAYE Assessments are generated by:

- The Collector General where an employer fails to submit a Monthly return or payment, or
- Revenue auditors, where, following the audit, there is no agreement as to the amount due.

Where a PAYE Assessment is issued, it will include amounts in respect of Income Tax, PRSI, USC and LPT, as appropriate. The Assessment will be discharged when the employer pays the liability due. An employer can appeal the Assessment by giving notice in writing to Revenue, within 30 days of the notice, requiring that the claim be referred to the Tax Appeals Commission. Any decision by the Appeal Commissioners is final and conclusive.

5.2 Penalties

The standard penalty for a Revenue offence (e.g. failure to remit income tax to the Collector General; failure to deduct tax from, or repay tax to, an employee in accordance with regulations, failure to register through ROS as an employer, failure to submit returns via ROS when required to do so, failure to keep a register of employees, etc.) is €4,000.⁴

6. Records

Employers/pension providers are obliged to keep payroll records for Income Tax, USC, PRSI and LPT purposes for 6 complete tax years⁵ in respect of each payment made to or on behalf of each employee for each income tax year, except where Revenue has initiated an audit or investigation into a taxpayer’s affairs, in which case records will have to be retained until the audit or investigation is complete, even where this is beyond the 6 year period.

⁴ Taxes Consolidation Act 1997, Section 987

⁵ Taxes Consolidation Act 1997, Section 903; Taxes Consolidation Act 1997, Section 531AAA; Social Welfare (Consolidated Contributions and Insurability) Regulations 1996, Regulation 17; Finance (Local Property Tax) Act 2012, Section 81 respectively

CHAPTER 28

Revenue Compliance Interventions

- 1. Introduction**
 - 2. Compliance Intervention Framework**
 - 3. Selection for a Compliance Intervention**
 - 4. Regularising Tax Defaults**
 - 5. Risk Review and the Revenue Audit**
 - 6. Finalisation of a Revenue Audit**
 - 7. Publication as a Tax Defaulter**
 - 8. Prosecution**
 - 9. Common Problems Arising on PAYE Audits**
 - 10. Compliance Interventions for PAYE Taxpayers**
 - 11. Revenue Headline Results for 2022**
 - 12. Qualifying Disclosure – Case Study**
-

1. Introduction

A Revenue Compliance Intervention is a crosscheck of the information and figures shown by businesses, employers, individuals, etc. in their tax returns against those shown in their business records. A Compliance Intervention may cover any of the following tax heads: Income Tax, Capital Gains Tax, Corporation Tax, VAT, PAYE, PRSI, USC, Relevant Contracts Tax (RCT), Professional Services Withholding Tax (PSWT), Local Property Tax (LTP), etc. Compliance Interventions can range from unannounced compliance visits to full comprehensive audits.

The Irish tax system is based on self-assessment principles. Revenue assumes that tax returns made under self-assessment are correct. However, due to the possibility of under declarations, Revenue crosscheck a number of returns and declarations to confirm the figures returned and payments made. Revenue published a revised version of its “**Code of Practice for Revenue Compliance Interventions**” which applies to any Revenue intervention notified on or after 1st May 2022 and is used as the main source of information in this chapter. The Code sets out the details of Revenue’s revised framework of compliance interventions which provides for a consistent, graduated response to taxpayer compliance behaviour ranging from easily accessible opportunities to voluntarily correct errors up to criminal investigation for serious cases of fraud or evasion.

The revised Code of Practice applies to both business taxpayers and PAYE taxpayers. In addition to employers being subject to a Compliance Intervention, it should also be noted that individuals are also audited by Revenue. For example, employees who pay their tax under the PAYE system may be requested by Revenue to complete an income tax return at the end of the tax year as a crosscheck against the information submitted by their employer. In addition, where an individual claims certain tax credits or reliefs, he is not required to send receipts or other documentation to

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Revenue. However, Revenue requires individuals to retain such supporting documentation and may be requested to submit it to Revenue at a later date for verification.

2. Compliance Intervention Framework

The Code of Practice outlines a 3 tier approach to compliance interventions (Level 1, Level 2 and Level 3). The intervention levels reflect Revenue's graduated response to risk and taxpayer behaviour and provide taxpayers with a mechanism and incentive to address any tax non-compliance issues voluntarily. These are levels of intervention and not to be considered as a sequence of actions. Revenue may initiate an intervention at any level of the framework in response to a perceived risk.

	Level 1	Level 2	Level 3
Objective	Support Compliance	Challenge Non-Compliance	Tackle high risk cases
Corrective Options	Payment of liability Self-correction Filing/amendment of relevant returns	Payment of liability Filing/amendment of relevant returns	Payment of liability Filing/amendment of relevant returns
Disclosure Position	Self-Correction or Unprompted Disclosure	Prompted Disclosure	No Qualifying Disclosure
Revenue Action	Self-Reviews Profile Interviews Bulk Issue non-filer reminders CCF Engagement	Risk Review Audit	Investigation

Revenue recognises that most taxpayers want to comply with their tax obligations and pay the right amount of tax at the right time. Supporting taxpayers in getting it right first time facilitates voluntary compliance. However, even the most compliant taxpayers can make errors in filing tax returns and paying the correct amount due. For this reason, Revenue provides a range of opportunities for taxpayers to self-review, self-correct or to make unprompted qualifying disclosures of any matters. These opportunities ensure that interest and/or penalties are kept to a minimum, if at all.

Actions which are designed to assist taxpayers in being voluntarily compliant fall within Level 1 which means taxpayers can address them through self-correction or by making an unprompted qualifying disclosure as appropriate. However, taxpayers can review their tax affairs at any stage and do not need to wait for a Level 1 Compliance Intervention before reviewing their position. All taxpayers should manage their compliance position on a proactive basis.

2.1 Level 1 Compliance Interventions

Level 1 compliance interventions are aimed at supporting voluntary compliance by reminding taxpayers of their obligations and providing them with the opportunity to correct errors before a more in-depth inquiry is initiated by Revenue. Level 1 interventions will be broad based and only occur where Revenue has not already engaged in any detailed examination or review of the matters under consideration.

Taxpayers will have the opportunity to **self-correct without penalty** within the time limits or submit an **unprompted qualifying disclosure**. For PAYE, USC and PRSI returns a self-correction must take place before the due date for filing the Income tax (IT) or Corporation tax

(CT) return for the chargeable period within which the return period ends or, where no IT/CT filing obligation exists, by 31 October following the end of the tax year in which the monthly PAYE return was due to be filed.

Taxpayers are required to notify Revenue of the self-correction in writing or through ROS (i.e. through myEnquiries). Submitting an amended return on ROS does not constitute notification to Revenue.

Some examples of a Level 1 Compliance Intervention include:

2.1.1 Reminder Notification of Outstanding Tax Returns

Taxpayers have a responsibility to file all required tax returns and to pay all tax liabilities on time. However, from time to time, situations may arise where normally compliant taxpayers fail to meet these obligations on time. In such situations, Revenue may issue a reminder notification to file the return and pay any associated liability. The form of communication used in such instances will vary and could be part of a wider ‘bulk issue’ or be referenced in media campaigns, press releases or website statements. These interventions may escalate to more in-depth Level 2 or Level 3 interventions where a compliance risk is subsequently identified (including non-filing of the relevant return).

2.1.2 Request to Self-Review

As part of Revenue’s overall approach to non-compliance, they will carry out targeted reviews of specific issues that are found to be prevalent across a particular group of taxpayers and which require those taxpayers to self-review the information already provided in their tax returns. These requests will operate as Level 1 interventions and, as such, provide the taxpayer with the opportunity to self-correct or make an unprompted qualifying disclosure as appropriate. Taxpayers are strongly advised to take advantage of these opportunities to self-review as any subsequent intervention by Revenue will be at Level 2 or Level 3 of the intervention framework.

Example 1

ABC Ltd received a letter from Revenue advising that Revenue are reviewing benefit in kind (BIK) on company cars for the last two complete tax years and Revenue have requested ABC Ltd to carry out a review of its BIK on company cars in respect of these years.

Solution 1

ABC Ltd immediately carry out a review of the BIK operated on company cars over the last two complete tax years. They identify that the incorrect BIK rate was applied in respect of three employees. The directors of ABC Ltd decide to make a disclosure to Revenue and pay any tax underpayment identified.

At this point the option of a self-correction and/or an unprompted qualifying disclosure is available to ABC Ltd as a Notice of a Level 2 or Level 3 intervention has not yet issued. Self-corrections and qualifying disclosures are discussed in more detail below.

2.1.3 Profile Interviews

At times, Revenue may wish to meet with a taxpayer (online or in person) to obtain a better understanding of the nature of the business and its tax treatment. Revenue will not carry out Profile Interviews where it has identified any specific tax compliance risks in relation to the business. This type of engagement is classified as a Level 1 intervention within the Compliance Intervention Framework, thereby providing the taxpayer with an opportunity to self-correct or

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make an unprompted qualifying disclosure if appropriate. A more in-depth Level 2 or Level 3 intervention may be initiated where compliance issues are identified.

Example 2

LM Ltd receive a letter from Revenue advising that Revenue are reviewing payments made to former employees and to any other individuals not contained in the Payroll Submissions for the last two complete tax years. The letter indicates that Revenue intends to conduct a profile interview and have requested documentation in respect of these years on tax treatment on these payments operated by LM Ltd.

Solution 2

LM Ltd immediately carry out a review on the payments to individuals over the last two complete tax years and identify potential issues in relation to one former individual who was engaged as a self-employed consultant. The payroll manager consults “Code of Practice for Determining Employment or Self-Employment Status of Individuals” available on the Revenue website. The review identifies potential employer PRSI and expenses issues. Although they are not certain of the correct treatment there is not enough time to contact and receive guidance from the Scope Section of Department of Social Protection.

The directors of LM Ltd decide to prepare an unprompted disclosure to present to Revenue at the start of the profile interview. Again, at this point the option of making an unprompted qualifying disclosure is available to LM Ltd as they have not been notified of a Level 2 or Level 3 intervention.

2.1.4 Engagement with Businesses under the Cooperative Compliance Framework (CCF)

The Cooperative Compliance Framework (CCF) is operated by Revenue for qualifying taxpayers. Cooperative Compliance involves an agreed business relationship between the taxpayer and Revenue which aims to achieve the highest level of voluntary tax compliance, based on trust and certainty of treatment. The CCF approach is voluntary in nature and involves Revenue and the taxpayer agreeing actions to ensure tax compliance. Any activities conducted through the CCF are classified as Level 1 interventions.

2.2 Level 2 Compliance Interventions

Level 2 compliance interventions are aimed at challenging non-compliance and take the form of risk-based reviews or audits on data provided by taxpayers in their tax returns. These risk-based reviews range from an examination of a single issue within a tax return to comprehensive tax audits. Level 2 Compliance Interventions will generally focus on a year or period where a specific risk has been identified by Revenue. However, multi-year (or multi-period) interventions may be carried out where material risks are identified across multiple years (or periods).

Taxpayers will be given 28 days' notice of a Level 2 Intervention which will clearly indicate the type of intervention (i.e. risk review or audit). Taxpayers will be entitled to make a **prompted qualifying disclosure** before the risk review or audit commences but will not be able to avail of an unprompted qualifying disclosure. Taxpayers will have 21 days to submit a notice of intention to make a prompted qualifying disclosure and can request up to 60 days to prepare the disclosure. Once the intervention has commenced, the entitlement to avail of a prompted qualifying disclosure is no longer available.

Level 2 interventions include Risk Reviews and Audits, and may be desk based or field based.

2.2.1 Risk Review

A Risk Review is a focused intervention to examine a risk or a small number of risks on a return, and may focus on a particular aspect or issue on a return, or from a risk identified from Revenue's REAP (Risk Evaluation, Analysis and Profiling) system.

2.2.1 Revenue Audit

A Revenue Audit is an examination of the compliance of a taxpayer with tax and duty legislation, having regard to the accuracy of specific returns, statements, claims or declarations. An audit will be initiated (as opposed to a Level 2 Risk Review) where there is a greater level of perceived risk.

A Revenue Audit can involve an examination of all risk indicators in a case (across taxes and periods) or may focus on a single issue/single tax within the case. It includes, where appropriate, an examination of a taxpayer's books, records and compliance with tax obligations so as to establish the correct level of liability. An audit may also be subsequently extended to include additional issues, taxes or years/periods depending on the issues uncovered during the initial examination and will include collecting any arrears of tax that are outstanding at that time.

If tax defaults arise in a director-owned company, it is usually for the benefit of one or more of the directors. Consequently, an audit of a director-owned company includes an audit of the directors' tax affairs. In such situations, all parties subject to the audit will receive a notification of a Revenue audit.

Apart from randomly selected cases, audits are generally based on informed selections from the risk profiling of cases, including computer-assisted profiling as well as local knowledge. Audit cases may also be selected for examination of a particular sector or scheme.

Example 3

GDH Ltd have received a "Notification of a Revenue Audit" letter from Revenue which advises GDH Ltd of a comprehensive audit due to commence in 28 days.

Solution 3

The management of GDH Ltd immediately have a meeting with their accountant on how best to proceed. An initial high-level review identifies a number of payroll and non-payroll issues. Due to time constraints GDH Ltd decide to formally request in writing a 60-day extension to prepare a "prompted qualifying disclosure".

As a "Notification of a Revenue Audit" letter has issued the written notice of intention to make a disclosure must be given within 21 days of the day of issue of the 'Notification of a Revenue Audit' letter.

2.3 Level 3 Compliance Interventions

Level 3 compliance interventions comprise of Revenue Investigations aimed at tackling high-risk cases or practices displaying risks of suspected fraud and tax evasion.

A Revenue Investigation is an examination of a taxpayer's affairs where Revenue believe that serious tax or duty evasion may have occurred, or an offence may have been committed. A Revenue Investigation may lead to criminal prosecution.

A Revenue Investigation is generally initiated by advising the taxpayer in writing that his or her tax affairs are under investigation. The investigation letter will specify the period of the

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investigation and the action required from the taxpayer and this will be related to the information that Revenue possesses. There are some situations where a Revenue Investigation is regarded as on-going without formal notification being given to the taxpayer. Examples of this include an investigation into:

- Matters that have become known, or are about to become known, to Revenue through their own investigations or through an investigation conducted by a statutory body or agency, or
- Matters within the scope of an enquiry being carried out wholly or partly in public, or
- Matters to which a person is linked, or about to become linked, publicly.

A taxpayer who receives a “Notice of a Revenue Investigation” letter may make a disclosure but will no longer be able to benefit from:

- The opportunity to make a qualifying disclosure,
- The avoidance of publication if the final settlement meets the publication criteria of Section 1086A **Taxes Consolidation Act 1997**,
- Assurance from Revenue that the case will not be investigated with a view to referral for criminal prosecution.

Where, in the course of a Level 2 or Level 3 intervention an auditor encounters information, not previously disclosed by the taxpayer, suggesting serious tax or duty evasion or that a Revenue offence may have occurred, Revenue will inform the taxpayer by letter that a civil or criminal prosecution will be considered. The final decision in relation to any criminal prosecution rests with the Director of Public Prosecutions.

A Revenue Investigation may commence with an unannounced visit to the business premises. In such cases the '*Notification of a Revenue Investigation*' will be given to the taxpayer at the time of the visit. In all cases where a Revenue Investigation is being notified, the letter issued to the taxpayer (and agent) will include the wording '*Notification of a Revenue Investigation*'.

The letter issued by Revenue will outline the specific period and the matter being investigated and the action required from the taxpayer. The specified period outlined in the letter will not preclude Revenue from extending the period of the Revenue Investigation if further information emerges.

Taxpayers notified of a Level 3 intervention cannot make a qualifying disclosure regarding the matter under investigation. This could result in the final settlement being subject to publication where the underpayment of tax exceeds €50,000 and the penalty exceeds 15% of the amount of the additional tax due. A taxpayer may make a disclosure of previously undeclared tax or duty liabilities at any time but it cannot be treated as a ‘qualifying disclosure’.

3. Selection for a Compliance Intervention

Other than a small number of randomly selected cases, taxpayers are selected for a compliance intervention based on the presence of various risk indicators. Revenue uses the following methods, which are primarily risk based, for selecting employers for audit:

3.1 Risk Evaluation Analysis and Profiling:

Revenue’s Risk Evaluation Analysis and Profiling (REAP) system makes a significant contribution to the risk based focus of their audit.

REAP risk-rates Revenue's customer base, providing coverage across all the main taxes and duties. 'Risk' in this context means the risk posed to Revenue's core business of 'collecting the right tax and duty at the right time'. REAP has been designed to analyse a vast amount of data (including third party data) that Revenue has on tax and duty cases and to attribute scores based on the level of risk they pose. It prioritises cases based on risk, enabling Revenue to target its attention on those who need it most and minimising contact with compliant customers. It focuses on a customer's track record rather than single returns and it ensures fairness by applying the same rules to all cases.

3.2 Real-Time Risk Analytics – VAT, PAYE and Customs

Real-time risk analytics (RTRA) involves the use of predictive models and associated business rules in Revenue systems to ensure that transactions entering the systems are risk assessed at the time the transactions are made.

The VAT real-time risk framework identifies potential VAT fraud. It applies to VAT payable and VAT repayable. The PAYE real-time risk framework helps prevent incorrect claims associated with PAYE refunds and tax credits and the detection of under declared income.

3.3 Real-Time Data

While the use of REAP and RTRA will continue, Revenue's approach to compliance management is evolving to reflect the increasing incidence of real-time tax administration. As more data becomes available to Revenue in real-time, they will seek to identify and address non-compliance as it arises where appropriate. This will result in Level 1 Compliance Interventions being initiated in a more timely manner. This mirrors the approach taken with PAYE real-time compliance. Where this type of real-time engagement does not fully address identified risks, more detailed examinations will be undertaken, including risk review, tax audit and investigation, possibly leading to prosecution in serious cases. Risk based case selection will continue and where historic issues are discovered, appropriate compliance interventions will be initiated.

3.4 Reviews of Specific Trades, Professions or Economic Sectors

From time-to-time, projects are conducted to examine tax compliance levels in particular trades, professions or sectors. Risks are identified. Lessons learned from selected cases are then applied to the sector, focusing on those taxpayers displaying the risk features. The REAP risk model is adjusted to take account of sector-specific risks.

Projects can range from Level 1 interventions to full comprehensive audits (Level 2). In many instances, Revenue will have gathered intelligence on a sector in advance from a number of sources, including REAP, results from other enquiries and audits in the sector, local knowledge, or information from third parties, including suppliers.

A project may focus on all businesses in one geographic location. In some instances, taxpayers in a sector will be asked to "self-review" (Level 1 Intervention). They are asked to review their returns, paying attention to certain areas of risk that Revenue has identified. Revenue treats any qualifying disclosures received as a result of self-review as "unprompted qualifying disclosures" with a significant reduction of penalties.

For example, in 2021, the areas of particular focus by Revenue were the construction sector; wholesalers and retailers; restaurants and fast food outlets; rental income; pubs; accounting, bookkeeping and auditing services; legal profession; and medical profession. There was also a strong emphasis on businesses which have scope to pay suppliers or staff in cash.

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4. Regularising Tax Defaults

There is an advantage to a taxpayer in reviewing his or her tax affairs regularly. If irregularities are evident, they should be quantified and reported to Revenue. This can save money in reaching a settlement with Revenue. Taxpayers may regularise their affairs in a number of ways:

- Self-correction without Penalty
- Correcting an innocent error
- Making a technical adjustment
- Making a “no loss of revenue” claim
- Making a qualifying disclosure

4.1 Self-correction without Penalty

Revenue wishes to facilitate taxpayers who discover errors after submission of the relevant tax returns and who wish to regularise the position. To encourage taxpayers to regularly review their compliance Revenue will allow taxpayers “self-correct” returns without penalty subject to the following conditions:

- The taxpayer must notify Revenue, within the applicable time limit (either in writing or through myEnquiries in ROS), of the adjustments being made (**Note:** submitting an amended return on ROS does not constitute notification to Revenue),
- The taxpayer must include a computation of the correct tax and statutory interest payable, and
- Payment, in full, must accompany the submission (a payment can be made on ROS).

For bi-monthly/quarterly/half-yearly remitters of VAT, if the net underpayment of VAT for the period being corrected is less than €6,000, the amount of the tax can be included (without interest or notification to Revenue) as an adjustment on the next corresponding VAT return following that in which the error was made.

The following time limits apply in respect of self-correction:

- For chargeable persons (Form 11) the self-correction must take place within 12 months of the due date for filing the annual return.
- For PAYE (Income tax, PRSI and USC), the self-correction of a Monthly Return (i.e. the correction must be made to the underlying Payroll Submission) must be made by the due date for filing the annual Income Tax or Corporation Tax return within which the relevant PAYE period ends (e.g. if a company’s accounting year ends on 31st December, the self-correction must be made by the following 23rd September). If no Income tax or Corporation tax filing obligation exists (e.g. a tax exempt organisation), the self-correction must take place by 31st October of the following year.
- For Local Property Tax, the self-correction must take place within 12 months of the due date for filing the return.
- For VAT, the self-correction must take place before the due date for filing the Income Tax or Corporation Tax return for the chargeable period within which the relevant VAT period ends.

For Relevant Contracts Tax, in cases where a deduction authorisation was obtained from Revenue, no self-correction can be made to the RCT return after the return due date. Where a principal contractor makes a relevant payment to a subcontractor without first obtaining a deduction authorisation from Revenue, the principal contractor shall be liable to a penalty of

either 35%, 20%, 10% or 3% of the relevant payment depending on the tax status of the subcontractor.

The benefit of self-correction will not apply to a specified year or period

- Where Revenue has notified the taxpayer of a Level 2 or Level 3 compliance intervention (i.e. risk review, audit or investigation) for that period.
- Where the proposed correction relates to an instance of deliberate default.

Self-correction in accordance with this section will not result in a risk review or audit. However, Revenue may initiate a Level 2 intervention where a risk is identified.

Once the time limits for self-correction listed above have lapsed, the taxpayer may still be entitled to the benefit of making a “qualifying disclosure”.

4.2 Correcting an Innocent Error

A penalty will not be payable in respect of a tax default if Revenue is satisfied that the tax default was not deliberate and was not attributable in any way to the failure by the taxpayer to take reasonable care to comply with his or her tax obligations.

Factors that will be considered in deciding whether a penalty does not arise include:

- Whether the taxpayer keeps proper books and records in order to fulfil his tax obligations,
- The frequency with which errors, which individually could be viewed as innocent, occur. Repeatedly making errors, indicating that the appropriate level of care is not being exercised, would place the default in the ‘Careless behaviour without significant consequences / Insufficient care’ category or higher.
- The previous compliance record of the taxpayer. A good compliance record may indicate reasonable care has been exercised. Conversely, a poor compliance record could indicate carelessness.
- The materiality of the error being corrected. For example, where the error being corrected is immaterial in relation to the overall tax liability of the taxpayer.

Statutory interest will be applied.

4.3 Technical Adjustments

Technical adjustments can be described as adjustments to liabilities that arise from differences in the interpretation or the application of legislation. For a technical adjustment not to attract a penalty, Revenue must be satisfied that:

- Due care has been taken by the taxpayer, and
- The treatment concerned was based on a mistaken interpretation of the law and did not involve deliberate behaviour.

In determining whether due care has been taken by the taxpayer, Revenue will consider a number of factors such as:

- Published Revenue guidance on the issue,
- Where there is published legal precedent available relevant to the point at issue (e.g. determinations of Tax Appeals Commission or the Courts),

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- The expertise available to the taxpayer in terms of legal, accountancy and tax advice and applied to the position taken by the taxpayer, the complexity of the issue and the relevant legislation,
- The magnitude of the tax consequences. Taxpayers are expected to take due care in relation to complex issues where there are significant amounts of tax at stake.

Matters that are well established in case law and precedent will not be accepted by Revenue as technical adjustments.

Statutory interest will be applied.

4.4 No Loss of Revenue

Taxpayers have sought to justify their failure to correctly operate the tax system by claiming that a loss of revenue does not arise. Notwithstanding this, Revenue has a clear responsibility to ensure the correct operation of the tax system. Non-operation or incorrect operation, if allowed to continue, would erode the integrity of the tax system.

In addition, it increases the risk of revenue loss and can give a business an unfair advantage over its competitors. Revenue is bound to assume, unless or until the contrary is proven, that non-operation of tax systems leads to revenue loss and must be penalised. Revenue is aware that in certain exceptional cases a “no loss of revenue” situation can arise, particularly with VAT.

In all cases the onus is on the taxpayer to provide evidence to conclusively demonstrate to the satisfaction of Revenue that there is no loss of revenue. Where this onus of proof is not met, the “no loss of revenue” arrangements will not apply. There is no right of appeal against Revenue’s refusal to accept a “no loss of revenue” claim.

‘No loss of revenue’ claims will not be accepted in any of the following circumstances:

- Where the default is in the *deliberate behaviour* category
- Where there is general failure to operate the tax system
- Where “no loss of revenue” is not proven to the satisfaction of Revenue
- Where the taxpayer has not co-operated
- Where the “no loss of revenue” claim is not submitted in writing
- Where a “no loss of revenue” tax default penalty is not agreed and paid (excludes innocent error and technical adjustment cases)

Where Revenue is satisfied that “no loss of revenue” has occurred, they will not seek to collect the tax amount in question. Statutory interest may be sought, but this will be limited to any period during which there was a temporary loss of revenue. Claims in respect of “no loss of revenue” must be made by way of a Qualifying Disclosure. All “no loss of revenue” claims should be submitted to Revenue in writing and include (in one submission) all supporting documentation to validate the “no loss of revenue” claim.

No penalty applies in cases of innocent error or technical adjustment (as outlined above).

A penalty applies where a “no loss of revenue” is accepted by Revenue in relation to careless behaviour which has been disclosed in a qualifying disclosure, in accordance with the following table:

Careless behaviour “no loss of revenue” tax defaults	Unprompted Qualifying Disclosure	Prompted Qualifying Disclosure	No Qualifying Disclosure
First qualifying disclosure in this category	Lesser of 3% of tax underpaid or €5,000	Lesser of 6% of tax underpaid or €15,000	
Second qualifying disclosure in this category	Lesser of 3% of tax underpaid or €20,000	Lesser of 6% of tax underpaid or €30,000	
Third or subsequent qualifying disclosure in these categories	Lesser of 3% of tax underpaid or €40,000	Lesser of 6% of tax underpaid or €60,000	
No Qualifying Disclosure			Lesser of 9% of tax underpaid or €100,000

4.5 Disclosures

The concepts of ‘qualifying disclosure’, ‘prompted qualifying disclosure’ and ‘unprompted qualifying disclosure’ are key features in determining the level of penalty payable in settlements between taxpayers and Revenue. By making a qualifying disclosure, a taxpayer is entitled to a reduction in the tax-gearred penalty applying to any tax settlement. A taxpayer who makes a qualifying disclosure will not be investigated with a view to prosecution and will not have his or her tax settlement published in the list of tax defaulters.

4.5.1 Definition of a Qualifying Disclosure

A taxpayer is encouraged to make a disclosure of previously unreported or undeclared additional tax or duty liabilities, or other errors made in a return at any time but the opportunities available to the taxpayer to make a ‘qualifying disclosure’ are as outlined in tax legislation.

A **Qualifying Disclosure** is a disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that is made in writing, is signed by or on behalf of the taxpayer and is accompanied by:

- **A declaration**, to the best of that person’s knowledge, information and belief, that all matters contained in the disclosure are correct and complete, and
- **A payment of the tax and interest** on late payment of that tax.

The category of default determines the scope of the liabilities which must be included in the disclosure in order for it to be considered qualifying, outlined as follows:

Category of Default	Type of Qualifying Disclosure	Requirement for a Qualifying Disclosure (accompanied by payment of tax, duty and interest)
Deliberate behaviour	Prompted and Unprompted	State all liabilities to tax and interest in respect of all taxes and periods where previously undisclosed
Careless behaviour	Prompted	State all liabilities to tax and interest in respect of the relevant tax and periods within the scope of the compliance intervention

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Careless behaviour	Unprompted	State all liabilities to tax and interest, in respect of the relevant tax and periods that are the subject of the disclosure
		A Qualifying Disclosure does not need to state the amount of the penalties due. Penalties will be subsequently agreed and paid.
		The tax, duty and interest owed must be paid.
		Full explanation and particulars in relation to how the chargeable amounts not previously disclosed arose, must be included.
		A statement, including computations, together with disclosure of estimates used, if any, of the amount of tax, duties, PRSI and Levies/Charges due for each period concerned must be included.
		Where any tax return was made or submitted by a person, neither deliberately nor carelessly, and it comes to that person's notice that it was incorrect, then, unless the error is remedied without unreasonable delay, the incorrect return shall be treated as having been deliberately made or submitted by that person.

On receipt of a qualifying disclosure, Revenue will agree the penalties with the taxpayer and will obtain payment of the full amount of the settlement to include tax, duty, interest and penalties.

One of the conditions of a qualifying disclosure is that the liability due **must** be paid. A genuine and accepted proposal to pay the agreed liability (involving payment or an agreed phased payment arrangement made in accordance with Revenue's phased payment procedures) will satisfy the payment criteria for a qualifying disclosure. Where a taxpayer fails to honour a phased payment arrangement, and Revenue is satisfied that the intention to pay was not genuine, the disclosure will not be regarded as a qualifying disclosure. As a consequence, the level of penalty will be reviewed, publication may arise, and prosecution may arise.

During a Level 2 Intervention Revenue may determine that it is necessary to extend the scope of the intervention to address further risks identified. In these circumstances Revenue will formally notify the taxpayer, and agent where relevant, of the further periods/tax heads under review. Prior to the issue of such notification, the taxpayer may still make an unprompted qualifying disclosure in relation to periods/tax heads outside of the original scope.

An intervention carried out in a parent company or a subsidiary company may necessitate interventions in respect of other companies within a group. Prior to the issue of intervention notifications to these, any group company not included in the scope of the original intervention may still make an unprompted qualifying disclosure.

For all tax defaults, irrespective of the date the tax default occurred, a qualifying disclosure will enable the taxpayer to secure the benefits of non-publication as a defaulter.

4.5.2 Definition of an 'Unprompted Qualifying Disclosure'

An '**Unprompted Qualifying Disclosure**' is a disclosure that has been voluntarily submitted to Revenue in writing before Revenue has issued any notification of intention to commence any Level 2 or Level 3 compliance interventions in relation to any matter included in the disclosure.

To secure an agreed period of up to 60 days to prepare an unprompted qualifying disclosure, a notice of intention to make the disclosure must be made by the taxpayer in writing to Revenue before the notification of a Level 2 or Level 3 compliance intervention is made.

This allows the taxpayer to quantify the shortfall, discuss any matter of concern with Revenue including the category of default on which the penalty is to be based, and to make the relevant payment.

4.5.3 Definition of a ‘Prompted Qualifying Disclosure’

A “**Prompted Qualifying Disclosure**” is a disclosure that has been made to Revenue in the period between the date (i.e. the date shown on the letter) on which the person is notified by Revenue that a Level 2 compliance intervention will start and the commencement date of the Level 2 intervention.

Taxpayers will receive 28 days’ notice of a Level 2 compliance intervention. The notification letter issued will confirm that the intervention will be considered to have started 28 days after the date of the letter. As and from the date of issue of a ‘Notification of a Level 2 Compliance Intervention’ letter (that is the date shown on the letter) to the taxpayer and agent, the opportunity to make an ‘unprompted qualifying disclosure’ is no longer available. The taxpayer can however make a prompted qualifying disclosure before the risk review or audit starts. Once the intervention begins, the entitlement to avail of a ‘prompted qualifying disclosure’ is no longer available.

To secure an agreed period of up to 60 days to prepare a prompted disclosure, a notice of intention to make the disclosure must be made by the taxpayer in writing to Revenue within 21 days of the issue of the Level 2 intervention letter. This allows the taxpayer to quantify the shortfall, discuss any matter of concern with Revenue including the category of default on which the penalty is to be based, and to make the relevant payment.

4.5.4 Exclusions – Disclosures not regarded as a Qualifying Disclosure

The following disclosures are excluded by legislation and are not regarded as qualifying disclosures:

- Where a Revenue investigation has already started,
- If before the disclosure is made, Revenue had started an investigation into any matter contained in the disclosure and had notified the person in this regard,
- If matters contained in the disclosure are matters:
 - (i) That have become known, or are about to become known, to Revenue through their own investigations or through an investigation conducted by a statutory body or agency,
 - (ii) That are within the scope of an enquiry being carried out wholly or partly in public, or,
 - (iii) To which the person who made the disclosure is linked, or about to become linked, publicly.

In addition, a disclosure is not a qualifying disclosure if it is incomplete or is not made in writing.

4.5.5 Benefits of making a Qualifying Disclosure for the taxpayer

The main benefits of making a qualifying disclosure are as follows:

- The taxpayer’s name and the amount of any settlement reached with Revenue are not published.
- Penalties are normally reduced.
- While no absolute guarantee can be given, it is the general practice for Revenue not to seek prosecution for Revenue offences and a monetary settlement is accepted.
- The compliance intervention can be completed in a shorter time.

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4.5.6 First, Second, Third and Subsequent Disclosures

Liability to a penalty is based on the category of behaviour (e.g. careless, deliberate) that gave rise to the default and the number of ‘qualifying disclosures’ previously made by the taxpayer (i.e. taxpayers who make repeated disclosures are subject to higher levels of penalty). A qualifying disclosure of tax defaults, which occurs following a substantive change in ownership of a company, will be regarded as a first qualifying disclosure.

4.5.7 The 5 Year Rule

If a taxpayer makes no additional qualifying disclosures within 5 years of a previous disclosure, any future qualifying disclosure is treated as a first qualifying disclosure. However, it should be noted that:

- A qualifying disclosure will only be a second qualifying disclosure if there was a liability to the specific tax-head in the first qualifying disclosure (i.e. if the previous qualifying disclosure was in respect of VAT and the current qualifying disclosure is in respect of PAYE, then the current qualifying disclosure is regarded as a first qualifying disclosure),
- Qualifying disclosures in the careless behaviour without significant consequences category are not counted when calculating the number of qualifying disclosures made by a taxpayer. These categories are intended to cater for defaults of a minor nature.

4.5.8 Qualifying Disclosures and Penalties

The liability to a penalty depends on the nature of the disclosure being made, whether or not the taxpayer has cooperated fully, and on the category of behaviour giving rise to the default. The following table sets out the net penalty (as a percentage of the underpaid tax) after mitigation appropriate to each category of tax default:

Qualifying Disclosure	Category of Behaviour	Penalty % Full co-operation not given	Penalty % Prompted Qualifying Disclosure and full cooperation	Penalty % Unprompted Qualifying Disclosure and full cooperation
All disclosures in this category	Careless behaviour without significant consequences	20%	10%	3%
First disclosure in these categories	Careless behaviour with significant consequences	40%	20%	5%
	Deliberate behaviour	100%	50%	10%
Second disclosure in these categories	Careless behaviour with significant consequences	40%	30%	20%
	Deliberate behaviour	100%	75%	55%
Third or Subsequent disclosure in these categories	Careless behaviour with significant consequences	40%	40% (no reduction)	40% (no reduction)
	Deliberate behaviour	100%	100% (no reduction)	100% (no reduction)

The above tables apply only to penalties - the statutory interest payable on the additional tax is not reduced.

A penalty will not be pursued where the aggregate amount of tax in respect of which penalties are computed is less than €6,000 and the default is not in the deliberate behaviour category of the tax default.

With regard to the categories of default giving rise to penalties, they are outlined as follows:

a) Deliberate Behaviour

As “Deliberate Behaviour” is not defined in the tax acts, it must be given its ordinary meaning. For a tax breach to be considered deliberate behaviour, there must be indicators consistent with intent on the part of the taxpayer. The breach must not have arisen solely as a result of carelessness of any kind.

Examples include:

1. Failing to keep proper books and records required by tax law to enable the taxpayer’s correct tax liability to be determined.
2. Repeated omissions or a large single omission of transactions from the books and records of the business.
3. Omissions from tax returns.
4. Providing incomplete, false or misleading documents or information.
5. Claiming a refund of tax when not lawfully entitled to that refund.
6. Failing to operate fiduciary taxes.
7. Concealment of bank accounts or other assets.

b) Careless Behaviour

Taxpayers must exercise care in fulfilling their tax obligations. It follows that careless behaviour is a lack of due care that results in tax liabilities returned by the taxpayer being understated, or repayment claims being incorrect.

There must be no indicators of deliberate behaviour for the careless behaviour category of default to apply. Although “careless behaviour” is not defined in the Tax Acts, ‘carelessly’ is considered to mean the “failure to take reasonable care”.

Careless behaviour with significant consequences is distinguished from careless behaviour without significant consequences by reference to the size of the shortfall relative to the correct tax liability in the case.

Careless behaviour without significant consequences means that the tax underpaid does not exceed 15% of the correct tax payable for the relevant period.

Careless behaviour with significant consequences means that the tax underpaid exceeds 15% of the correct tax payable for the relevant period.

Examples of careless behaviour include:

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1. Estimation of accounts items.
2. Neglecting to categorise expenditure into allowable and disallowable categories for tax purposes.
3. Neglecting to take advice on an issue of interpretation where either a tax agent or Revenue should have been approached for guidance on the particular issue.
4. The frequency of the error made. A case involving an isolated error with minor tax implications will be viewed in a different light to a case with more frequent errors.

Revenue will also consider the following factors in determining whether the taxpayer is considered to have taken due care:

- The extent of the tax at risk. The greater the tax risk (also having regard to the total tax liability), the greater the care required.
- The size and nature of the business.
- The internal controls in place.
- The standard of record keeping in the business.
- Any systems failure and the reasons for that failure.

4.5.9 No Qualifying Disclosure and Penalties

Where no qualifying disclosure is made, a taxpayer may still qualify for a reduction in penalties where he co-operates **fully** with Revenue during the course of the compliance intervention. Where the taxpayer has not cooperated fully, there is no scope for mitigation of penalties on that basis. It is not sufficient for a taxpayer to partially cooperate with Revenue.

Full co-operation includes the following:

- Having all books, records and linking papers available for Revenue at the commencement of the intervention,
- Having appropriate personnel available at the time of the intervention,
- Responding promptly to all requests for information and explanations,
- Responding promptly to all correspondence, and
- Prompt payment of the intervention settlement liability (includes phased payment arrangements).

Examples of lack of co-operation include:

- Refusing reasonable access to the business premises,
- Failing to provide reasonable access to the business records, including linking papers,
- Failing to provide Revenue with information known to the taxpayer which would be used in determining whether a tax underpayment arises, or
- Delays by the taxpayer in the course of the intervention where there was no reasonable excuse for those delays.

Revenue will provide any assistance required by taxpayers to enable them to co-operate with the intervention, including allowing them reasonable time to reply fully to correspondence.

The following table sets out the net penalty (as a percentage of the underpaid tax) after mitigation appropriate to each category of tax default:

All defaults where there is no Qualifying Disclosure	Category of Behaviour	Penalty	Full cooperation – penalty reduced to:
	Careless behaviour without significant consequences	20%	15%
	Careless behaviour with significant consequences	40%	30%
	Deliberate behaviour	100%	75%

5. Risk Review and the Revenue Audit

A Level 2 Compliance Intervention is appropriate where Revenue has identified a potential tax or duty risk in respect of a taxpayer.

Recognising that there are varying degrees of risk in terms of complexity or materiality, there are two separate types of intervention at Level 2 (Risk Review and Revenue Audit).

Revenue aims to examine and address risks in a manner that is as efficient and effective as possible. This is important both to minimise the cost to a taxpayer and to ensure the effective use of Revenue resources. To achieve this, Revenue will use the Risk Review intervention in cases where the time and costs of an audit are not justified.

Following notification of a Level 2 Intervention (either a Risk Review or Audit) a taxpayer will have the opportunity to make a prompted qualifying disclosure, where relevant. A Risk Review or Audit may be desk/correspondence based or field based (includes interventions carried out using video conferencing tools such as Skype or Microsoft Teams).

5.1 Risk Review

A Risk Review is a focused intervention to examine a risk or a small number of risks. For example, the risk review may focus on a particular risk on a return or from a risk identified from Revenue's REAP (Risk, Evaluation, Analysis and Profiling) system.

On this basis, the majority of Risk Reviews will be desk based. However, at times it may be necessary to visit the taxpayer's premises or hold a meeting by video conference.

Where a visit to a taxpayer's premises is required as part of a Risk Review, the taxpayer is expected to attend. Taxpayers may also invite their agent to attend. Visits will only be scheduled where necessary to effectively conclude the risk review. The general procedures in relation to site visits (as applicable to audits) apply in such cases.

5.2 Conduct of a Risk Review

The taxpayer will be issued with a letter confirming that they have been selected for a Revenue Level 2 Compliance Intervention - Risk Review, which will commence 28 days after the date of the notification. The notification is broadly similar to the Audit letter and will set out the scope (taxes) and period for the review. As the Risk Review is narrower in scale than an audit, the notification will confirm the focus of the review. For example, the Risk Review may specify the scope as Employers PREM (PAYE, PRSI and USC) for 2022, and that the focus will be on BIK on company vehicles.

The letter will confirm the information which is being requested by return within 28 days. The notification will also outline the taxpayers right to make a prompted qualifying disclosure in

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relation to any underpayment of tax within 28 days of the notification. Where additional time is required to prepare the disclosure, they can seek additional time (60 days) in which to prepare it.

Where the taxpayer does not respond to the Risk Review notification within 28 days, the inquiry is deemed to have commenced and the opportunity to make a qualifying disclosure is closed. It is important that taxpayers and their agents are aware of the importance of the 28 day deadline. Revenue will make every effort to contact taxpayers and their agents to remind them of the impending commencement.

In cases of non-engagement, there are a couple of options open to Revenue. For example:

1. Revenue may contact the taxpayer to arrange a visit to the premises to discuss the matters outlined in the notification letter. Any such visit is considered part of the now commenced intervention. No further notification is necessary, but Revenue will seek to agree the date for the visit with the taxpayer. The taxpayer may, if they wish, arrange for their agent to attend any such meeting. Where a site visit is required, it will be carried out at the taxpayer's principal place of business.
2. Where the matters are quantifiable without the necessity for a site visit, Revenue may form the view that an amount of tax or duty is due and issue a notice of assessment. In such cases, Revenue will contact the taxpayer setting out the basis of assessment prior to issuing the notice of assessment.

Where a taxpayer does not make a prompted qualifying disclosure, and the Risk Review has commenced, additional information may come to light which requires widening of the scope of the intervention (beyond the tax type and period specified in the original Risk Review letter). In such cases, the Risk Review may be escalated to an Audit and the scope increased to include other taxheads or periods.

For example, the scope of a Risk Review could be PAYE/PRSI and USC, with a focus on Travel and Subsistence for 2022. During the course of the intervention, a VAT risk may be identified. In such cases, Revenue will escalate the intervention to Audit. 28 days' notice of the audit will be given, and the taxpayer will have the opportunity to make a prompted qualifying disclosure in respect of any additional taxheads/periods (e.g. VAT) included in the Audit notification. The opportunity to make a prompted qualifying disclosure in respect of PAYE/PRSI and USC for 2022 ended at the commencement of the initial intervention in respect of that period.

5.3 The Revenue Audit

A Revenue Audit is an examination of the compliance of a person with tax and duty legislation having particular regard to the accuracy of specific returns, statements, claims or declarations. An audit will be initiated (as opposed to a Risk Review) where there is a greater level of perceived risk.

A Revenue Audit can involve an examination of all risk indicators in a case (across taxes and periods) or may focus on a single issue/single tax within the case. An audit may also be subsequently extended to include additional issues, taxes or years/periods depending on the issues uncovered during the initial examination and will include collecting any arrears of tax that are outstanding at that time.

The taxpayer will be issued with a letter confirming that they have been selected for a Revenue Level 2 Compliance Intervention - Audit, which will commence 28 days after the date of the notification.

5.4 Location of the Audit

An audit is usually carried out at the taxpayer's principal place of business and in the presence of the taxpayer and their agent where relevant. Where the business operates from multiple locations, Revenue may wish to visit some or all of these during the course of the audit.

Where a taxpayer has no trading premises and the books and records are retained at the taxpayer's private residence, the audit may be carried out at that location with the consent of the taxpayer. Where consent is not given, the audit will be carried out at a Revenue office. In any circumstance where it is not practical to carry out the audit at the place of business, the audit may be carried out at a Revenue office.

The taxpayer should ensure that any books and records held offsite for any reason (e.g. at an agent's premises), are returned to the taxpayer's place of business in time for the commencement of the audit.

In cases where data can be provided electronically, audits may be carried out remotely using video conferencing facilities. The concept of an audit is the same regardless of whether it is carried out in person on site or remotely using video conferencing facilities.

Where an e-audit is scheduled, the taxpayer's software expert may also need to attend.

5.5 Conduct of the Audit

On arrival at the place of audit, the auditor will show his or her identification and authorisation and explain to the taxpayer the purpose of the audit. It is Revenue policy not to disclose the reason for selecting a particular case for audit.

The taxpayer is informed about Revenue practice on charging interest and penalties and is offered the opportunity to make a prompted qualifying disclosure. In addition, the auditor will advise the taxpayer of the benefits of a qualifying disclosure regarding penalties and non-publication. After the initial interview, the examination of the books and records will begin, and the audit will be regarded as having commenced and the taxpayer can no longer make a qualifying disclosure.

The auditor will usually:

- Ascertain the nature of the business, identify those responsible for maintenance of the records and list the records kept,
- Examine the books and records, in whatever format held, both for completeness and the treatment of transactions having regard to tax and accounting principles,
- Check that all relevant returns have been made and are complete in accordance with the records,
- Make whatever enquiries are necessary for the audit,
- Advise the taxpayer of any errors, omissions or irregularities in the tax returns submitted (including those in the taxpayer's favour), determine liability if it arises, request settlement and specify any action that may be required to place the taxpayer on a compliant footing.

In general, where an audit is conducted on a taxpayers' premises, Revenue will conduct its examination of the books and records on the premises. As many business records are held in

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electronic format, Revenue may require certain queries to be run and reports to be generated to support the examination of these records. Alternatively, Revenue may require a download of data from the business systems for further interrogation.

Where it is necessary to remove hard copy records to conduct the audit in a Revenue office, auditors make every effort not to retain any records submitted to the office or collected from the taxpayer for more than 1 month. Revenue will request that an itemised listing of all books and records being submitted by the taxpayer is provided. Where Revenue is not provided with all requested books and records, the taxpayer will be informed in writing.

The taxpayer will be given a receipt for original records taken from a taxpayer's premises. It is important to note that a taxpayer will not be considered to have cooperated fully with a Revenue compliance intervention where all requested books and records have not been provided. Non-cooperation reduces the opportunity for penalty mitigation which can have significant tax and reputational risks for taxpayers.

Revenue aims to ensure that any compliance interventions are carried out with the minimum disruption to the taxpayer's business. Where records removed are required for current trading, the taxpayer will have the opportunity to seek copies or extracts from the records taken.

If more time is required to finalise an audit, the auditor, before the month has expired, will advise the taxpayer to that effect.

5.6 e-Auditing

A significant number of business taxpayers no longer use traditional paper-based records. Instead, they rely on computerised accounting systems and electronic records to do this, and to provide the basis for completion of the various tax return forms that they are required to file.

Given that computerised accounting systems and electronic records are now in general use, Revenue will use e-audit techniques for assurance that a business has filed true and correct tax returns based on the information contained in the underlying computerised records.

The terms 'e-Audit' and 'e-Auditing' are used to describe the use of computer programmes in the interrogation of records and data stored on electronic systems in the course of a Revenue compliance intervention. There is no distinction between records kept in a traditional manner and records kept using one or more of the many electronic systems available commercially.

Compliance interventions may involve an examination of the electronic systems used in the business and the electronic copying and downloading of electronic data for analysis. This does not change the nature of a Revenue compliance intervention; it merely allows Revenue use computer-assisted audit techniques on customer's data.

Generally, Revenue will request the taxpayer to provide reports and data files of a specific nature in electronic format. Where the transfer of electronic data from a taxpayer's IT or EPOS system to Revenue is required, the taxpayer or their IT support will be required to provide the necessary data downloads. The Revenue File Transfer Service (RTFS) is a secure facility that can be used to securely exchange data with Revenue personnel and is the preferred method. Alternatively, myEnquiries may be used to provide books and records subject to a 10MB file size limit.

The potential use of extensive e-auditing techniques will be noted in all compliance intervention notification letters. In some cases, Revenue will contact the taxpayer in advance of the audit to schedule a preliminary pre-audit meeting to identify and understand the computerised systems in use in the business, the format and extent of electronic records that are available and the electronic records that will be required to be made available at the formal Revenue Audit. This does not preclude Revenue from requesting access to further data before or during the Revenue Audit. The pre-audit meeting is carried out before the audit has commenced and, therefore, does not affect a taxpayer's entitlement to make a prompted qualifying disclosure.

5.7 Materiality in Audit Settlements

Level 2 compliance interventions are undertaken to tackle non-compliance. Where it is clear during the early stage of an intervention that a taxpayer's returns are substantially correct, Revenue will withdraw from the intervention.

Where it is evident that a taxpayer has made best efforts to ensure that tax returns are accurate, adjustments are not made for small inaccuracies on the basis that these may be attributed to innocent error.

Materiality, therefore, is always a factor in assessing the significance of an error or omission. Materiality is a matter for sensible judgement by Revenue.

5.8 Obstruction

If the taxpayer refuses to facilitate the audit or to produce the requested books and records in an acceptable format, the taxpayer is regarded as obstructing the audit process.

Revenue will provide the taxpayer with an opportunity to fully cooperate. However, where a refusal to facilitate the intervention continues, and it is clear that the taxpayer has no statutory or legal basis for refusal, the taxpayer will be advised that it is a criminal offence to obstruct or interfere with an authorised officer of the Revenue in the performance of their duties.

5.9 Years, Periods and Issues for Audit

Revenue compliance interventions generally focus on a year or a period where a specific risk has been identified. However, multi-year (or period) compliance interventions may be carried out where material risks are identified that potentially extend across several years (or periods).

In the notification letter, Revenue will identify year(s) or period(s) in focus for each tax or duty included in the intervention.

Revenue may, as a consequence of risks identified in the course of an intervention, consider it necessary to initiate further interventions in relation to connected entities or parties (e.g. the directors of a company). In such cases the taxpayer(s) subject to the additional interventions will receive the standard intervention notification and will, in general, have the opportunity to make a qualifying disclosure prior to the commencement of the additional intervention(s), except where a Level 3 interventions (Revenue Investigation) is initiated.

Revenue will consider the level of risk and materiality in deciding whether to open earlier years or periods. An intervention will only be extended to earlier years or periods where there is evidence to suggest material tax defaults have arisen. Examples of where earlier years/periods are likely to be opened include:

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- Where there is a significant unexplained accumulation of assets,
- Where there are strong indicators that a scheme to evade tax or duty has been in operation,
- Where there are strong indicators that a tax avoidance scheme exists that requires further examination,
- Where substantial loss of revenue has arisen in the year or period of audit, and it is likely that a similar position existed in previous years.

Where the initial scope of the audit is extended to other years, periods and/or tax-heads, the taxpayer has an additional opportunity (where required) to make a qualifying disclosure in respect of these additional periods/taxes.

5.10 Indications of a Serious Tax Offence

In the course of an intervention, Revenue will from time to time encounter strong indicators suggesting a serious tax offence has occurred. Serious tax offences which can lead to prosecution include (but not limited to) the following:

- Deliberate omissions from tax returns,
- False claims for repayments,
- Use of forged or falsified documents,
- Tax evasion schemes,
- Facilitating fraudulent evasion of tax,
- Failure in remitting fiduciary taxes (e.g. PAYE, USC & PRSI; VAT; RCT),
- Failure to produce records when required,
- Use of offshore bank accounts to evade tax.

Two main types of evidence arise in tax offences, namely documentary evidence and statements by the taxpayer.

Documentary Evidence

In the absence of a Qualifying Disclosure, documentary evidence may indicate a serious tax offence which will be referred to the Revenue prosecution division. If the case is considered suitable for prosecution, the taxpayer is advised accordingly.

Statements by the Taxpayer

A taxpayer who makes a general statement which indicates that an offence has been committed, or admits to a specific offence which he has committed, will be cautioned before making further incriminating statements. Cautions are not issued lightly and are generally reserved for cases suspected of involving tax evasion.

The caution to be given is the following: “You are not obliged to say anything unless you wish to do so, but whatever you say, will be taken down in writing and may be given in evidence”.

6. Finalisation of a Revenue Audit

In the course of an intervention, Revenue may conclude that a taxpayer’s affairs are in order. In these circumstances, Revenue will advise the taxpayer and finalise the intervention as quickly as possible.

Alternatively, the conclusion of an intervention may involve the determination of additional liabilities in relation to underdeclared tax and there may also be interest and penalties payable.

In addition, surcharges may apply in relation to the late filing of returns and/or fixed penalties may arise in respect of breaches of relevant regulations.

The exact manner in which a compliance intervention will be concluded will depend on the particular type of intervention. In audit cases, a final meeting will be held with the taxpayer to set out the findings of the intervention. It may also be necessary for a final meeting to be held following conclusion of a Risk Review where that has been carried out on-site. Where a final meeting is not required, Revenue will write to the taxpayer to set out the position.

Where Revenue is satisfied that the return(s) is (are) correct and no amendments are required, a letter will be issued confirming that the intervention is closed.

Where a liability arises, the taxpayer will be advised of the findings and Revenue will seek to agree these with the taxpayer. The taxpayer will be requested to provide a written settlement offer formally setting out the tax, interest and penalties due.

Where agreement is reached with the taxpayer in relation to either a ‘qualifying disclosure’ or any other additional tax/duty liability, Revenue will issue a final letter to the taxpayer (and agent where relevant) setting out details of the agreed settlement, drawing attention to any inadequacies in the records or tax treatment applied, and where relevant, noting the taxpayer’s confirmation that these matters have been rectified.

Where agreement is not reached with the taxpayer on the intervention result, Revenue will issue a summary letter setting out the proposed adjustments that gave rise to the additional liability to tax, duty, interest and penalties where applicable. The letter will seek agreement from the taxpayer or an explanation of why agreement cannot be made.

If agreement is not reached (or where payment is not made in an agreed case), Revenue will inform the taxpayer in writing of the basis of any assessment, amended assessment or estimate and will issue the relevant notices to the taxpayer (and their agent where relevant). Assessments or other notifications of liability may be appealed to the Tax Appeals Commissions.

Subject to the taxpayers right of appeal, where Revenue is unable to secure payment, the collection of the tax and statutory interest will be referred for appropriate enforcement proceedings without delay. Where the taxpayer appeals the liability, collection enforcement action will not take place until the appeal has been finalised.

Where the tax liability has been finalised, but penalties are not agreed with the taxpayer or where agreed penalties are not paid, a Notice of Opinion will be issued to the taxpayer. If the taxpayer agrees with the notice of opinion and pays the penalty, no further action is required.

Where the amount of the penalty is not agreed (or the taxpayer does not respond) within 30 days, Revenue may make an application to a relevant court for that court to determine that the penalty is due. This is outlined below.

Where a qualifying disclosure has not been made, Revenue will notify the taxpayer of the basis of assessment applicable. Revenue will also quantify the tax, duty, interest and penalties (if any) due and invite a written offer and payment of such liabilities. Revenue will advise the taxpayer (and their agent) where publication of the settlement will arise.

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6.3 Interest

The law provides for interest to be charged on tax underpaid where a taxpayer makes an incomplete or incorrect return. Interest is charged at the rate specified in the legislation, which for PAYE, PRSI and USC and VAT is 0.0274% per day (equivalent to 10% per year). Interest due is not mitigated (reduced).

Payment of underpaid tax and interest must be made within 1 month of the taxpayer making an offer in settlement. If the payment is not received within 1 month the interest charge in the settlement is re-calculated. Where an agreed Phased Payment Arrangement is put in place, interest covering the additional period will be due.

Where it is necessary to take enforcement action to collect a liability arising from an intervention, interest will continue to accrue from the original due date up to the ultimate date of collection. Additional charges in relation to the costs of any enforcement activity may also be due.

6.4 Surcharge for Late Submission of Returns

Taxpayers are liable to a surcharge for the late filing of a return. The surcharge applicable will be added to a settlement where an Income Tax, Capital Gains Tax, Corporation Tax, Capital Acquisitions Tax or Local Property Tax return was not filed on or before the specified return date.

The legislation states that the filing, on time, of an incorrect return, either fraudulently or negligently, is deemed to be late filing. However, a late filing surcharge will not be sought where the return was filed on or before the specified return date and a tax-geared penalty or a tax avoidance surcharge was applied to a settlement.

6.5 Penalties

In a case where a penalty arises, the amount of the penalty is generally calculated by Revenue, agreed with the taxpayer and paid. Where a taxpayer does not agree liability to a penalty, or an agreed penalty is not paid, then it is a matter for a court to determine whether that person is liable to a penalty.

A penalty does not apply where the aggregate amount of the tax default is less than €6,000 and the default is not in the deliberate behaviour category.

Liability to a tax-geared percentage penalty generally arises on the difference between the amount of tax paid (or refunded) based on an incorrect or false return (or no return), and the amount of tax that would have been correctly payable (or refundable) had the correct return been filed.

The following issues typically give rise to penalties (this is not an exhaustive list):

- Non-compliance with PAYE, VAT or RCT regulations,
- Undisclosed sales, receipts, income or gains,
- Undisclosed payments made to employees or RCT payments,
- Understated assets including the valuation of stock and debtors,
- Overstated liabilities, including creditors,
- Improper claims for expenses, capital allowances or reliefs.

In certain situations, a person may be liable to a **fixed penalty** for failure to fulfil a statutory obligation. Examples of such fixed penalties include:

- **Failure to file a Return:** Any person who is required to make a return of income, and fails to do so, is liable to a fixed penalty of €3,000. The penalty is chargeable on a per return basis. In addition, the penalty can be increased to €4,000 per return where the failure to submit the return continues after the end of the tax year in which the person received the tax return from the Inspector.
- **Incorrect Returns:** Any person who deliberately assists in or induces the making or delivery, for any purposes of income tax or corporation tax, of any incorrect return, account, statement or declaration shall be liable to a penalty of €4,000.
- Failure by an employer to comply with tax legislation or any of the PAYE Regulations can result in liability to a penalty of €4,000 for each breach, including:
 - Requirement to register with Revenue as an employer.
 - Requirement to keep and maintain a Register of Employees (in paper or electronic format).
 - Requirement to deduct (or repay) Income tax, USC and PRSI in accordance with the relevant legislation and regulations.
 - Requirement to submit a Payroll Submission to Revenue on or before the date an employee is paid.
 - Requirement to make a monthly return.
 - Requirement to deduct tax in respect of a notional payment.
 - Requirement to remit tax to the Collector General.

Where a tax-geared penalty (i.e. a penalty that is a percentage of the additional tax payable) has been agreed in relation to tax or duty default for specific period or periods, the penalty agreed is considered to include any fixed penalties which may be due as a result of filing an incorrect or late return in respect of any period covered by the settlement.

6.6 Penalties Determined by a Relevant Court

Where no agreement can be reached with the taxpayer on the level of penalties payable or where a penalty is agreed but not paid, then it is a matter for a relevant court to determine whether that person is liable to a penalty.

A relevant court means the District Court, the Circuit Court or the High Court, as appropriate depending on the amount of the penalty and the jurisdictional limits of the court. The jurisdictional limits are as follows:

- District Court – amounts up to €15,000
- Circuit Court – amounts up to €75,000
- High Court – amounts in excess of €75,000 (unlimited)

Where liability to a penalty is to be determined by a court, Revenue formally expresses the opinion that a penalty is due and gives notice of that opinion to the taxpayer and to the taxpayer's agent.

The Notice of Opinion will include details of:

- a) The provisions under which the penalty arises,
- b) The circumstances in which that person is liable to the penalty,
- c) The amount of the penalty to which that person is liable, and
- d) Such other details as the auditor considers necessary.

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For tax-geared penalties (i.e. penalties which are calculated as a percentage of the tax underpaid), the amount of the tax due must be finalised before a Notice of Opinion is issued.

If there is no agreement or payment of the penalty (or if there is no response from the taxpayer) within 30 days, the auditor may make an application to the relevant Court to have the Court determine the matter.

Where a Court determines that the taxpayer is liable to a penalty and makes an order for the recovery of that penalty, Revenue may collect and recover it in the same way as tax is collected.

Where a Court imposes a penalty, there is no right of appeal of such determination to the Tax Appeal Commission. Appeals of Court decisions are subject to the rules for each Court.

Penalties will only be recovered from the estate of a taxpayer after death where the person either agreed in writing to pay the penalties, or a Court has determined, before the taxpayer's death, that the person was liable to the penalties.

6.7 Review and Appeal Procedures

Where a difference of opinion arises, in relation to a compliance intervention, Revenue will respect the taxpayer's right to request a review or to avail of the statutory appeal procedure with the Tax Appeals Commission (TAC) and will facilitate the taxpayer who wishes to make such a request or lodge an appeal.

6.7.1 Review Procedures

Revenue's Complaint and Review Procedures provide taxpayers with an open and transparent mechanism for making a complaint and seeking a review of Revenue handling of a case. This review procedure only applies to Revenue's handling of a case. Disputes regarding tax liabilities must be submitted to the TAC.

6.7.2 Appeal Procedures

A taxpayer is entitled to lodge an appeal to the TAC (www.taxappeals.ie) against Revenue's findings in relation to the income and gains to be assessed in a revised assessment or tax estimate. Appeals must be lodged within the statutory timeframe, which is 30 days from the date of the Revenue decision.

In order to lodge an appeal against an assessment, any liability not under appeal must be paid. Where a taxpayer has entered into an agreed phased payment agreement (PPA) to pay the tax (including interest and collection fees), the liability will be considered to have been paid.

When an appeal has been accepted by the TAC, the taxpayer will be directed to provide a "statement of case" and supporting documentation, which must also be provided to the other party. The parties will be notified in advance of the hearing. In some cases, the Commissioner may deem it appropriate to make a decision on an appeal without a hearing, however the taxpayer can insist on having a hearing. Hearings are generally heard in public.

A taxpayer will be notified within 21 days of the outcome of his appeal and the determination of the Commissioner will be reported on the TAC website within 90 days. A decision of the Commissioner is final; however, an appeal can be made to the High Court where either party feels that the Commissioner erred on a point of law.

When an assessment or estimate is appealed, interest will only be charged when the tax in dispute is determined. Similarly, tax-gearied penalties may only be quantified when the tax is determined.

7. Publication as a Tax Defaulter

7.1 Obligation to Publish

Revenue is obliged to publish a list, within 3 months of the end of each quarter, containing the name, address and occupation of every taxpayer:

- On whom a fine or other penalty was imposed or determined by a court under any of the Acts in respect of tax-related matters during that quarter. Where a taxpayer is publishable under this category, the tax amount on which the court has determined the penalty will be published, whether the tax or penalty is paid or not.
- Where Revenue has agreed with a taxpayer to refrain from initiating proceedings for the recovery of any fine or penalty and accepted a settlement of any claim by Revenue for:
 - (i) payment of tax or duty,
 - (ii) payment of interest on that tax or duty, and
 - (iii) a fine or other monetary penalty in respect of that tax including penalties in respect of the failure to deliver returns or other documents in connection with that tax or duty, and
 - (iv) payment of any surcharge, where applicable.

Where Revenue accepts or undertakes to accept a settlement of a tax or duty default, the acceptance of this sum is deemed to have been made pursuant to an agreement between Revenue and the taxpayer. Publication applies regardless of whether the taxpayer has paid the settlement amount within the relevant period. Where settlement has not been paid in full, details of the outstanding amount will also be published.

The list of defaulters must be published in the Government publication – Iris Oifigiúil. In addition, Revenue is given the discretion:

- To publicise or reproduce the list in such manner, form or format as it considers appropriate (e.g. on the Revenue website), and
- To specify on the list such particulars of the settlement and the matters giving rise to the settlement as Revenue thinks fit (e.g. total amount of the settlement and a brief description of what gave rise to the settlement).

Revenue will advise the taxpayers who meet the criteria that they will be published in the list of defaulters and will advise them of the particulars that will be published.

7.2 Exclusions from Publication

Legislation provides for statutory exclusions from publication, hence Revenue does not publish the following:

- 1) Cases where a qualifying disclosure is accepted.
- 2) Cases where the tax underpayment made (or tax refund incorrectly claimed) does not exceed the publication limit (currently €50,000).
- 3) Cases where the penalty (agreed with taxpayer or determined by a court) does not exceed 15% of the additional tax due.
- 4) Cases where a qualifying avoidance disclosure is accepted and/or a tax avoidance surcharge.

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Therefore, a taxpayer who makes an “unprompted qualifying disclosure” or a “prompted qualifying disclosure” does not have his name published.

Certain tax and interest is excluded from publication if a penalty does not apply. In particular, the amount to be published, if any, excludes tax included in a settlement (or related interest and penalties) where the penalty in relation to the tax does not exceed 15% of the amount of that tax. This test applies separately to each tax-head included in an aggregated settlement.

Where a taxpayer makes a settlement to Revenue which is made up partly of a qualifying disclosure and partly of a non-qualifying disclosure, the amount of tax, interest and penalties relating to the qualifying disclosure will be excluded from publication and only the amounts relating to the non-qualifying disclosure will be published, providing the publication limit and criteria are met. If a taxpayer fails to pay the settlement, this fact can also be included in the publication of the tax defaulter’s list.¹

7.3 Payment of an Agreed Liability

The full amount due (including arrears of tax, interest and penalties, if they arise) is payable to Revenue when the liability is agreed. A receipt will be issued promptly.

In certain circumstances (e.g. where a taxpayer has limited access to the funds but continues to generate income), Revenue may agree to a phased payment arrangement. However, additional interest is payable on such instalment arrangements and current taxes must be kept up to date during the term of the instalment arrangement.

7.4 Taxpayer Unable to Pay

In exceptional circumstances, a taxpayer may claim inability to pay the full amount because of insufficient earning or borrowing potential, or due to a lack of disposable assets. In these circumstances, a taxpayer is required to complete a statement of his financial position. This objective evidence is used by Revenue in assessing the taxpayer’s capacity to pay his tax liabilities.

If Revenue are satisfied with the position outlined by the taxpayer, Revenue may suspend the collection of a liability, or part of a liability, pending any change in the taxpayer’s circumstances.

8. Prosecution

Revenue take a tough stance on tax evasion and fraud. In general, Revenue refers the following categories of cases for prosecution:

- 1) Cases where taxpayers have not filed tax returns. This type of prosecution is quite common.
- 2) Cases of serious tax evasion where taxpayers have filed false tax returns, produced false documentation, failure to remit fiduciary taxes (PAYE, RCT), or made bogus claims for reliefs or repayments. A small number of these type of prosecutions are initiated each year.
The Revenue Commissioners take a tough stance on tax evasion and fraud.

There are specialist units in Revenue whose function involves the investigation of cases considered suitable for prosecution. Where applicable, cases are referred to the Director of Public Prosecutions who makes decisions as to whether a case should be prosecuted.

¹ Taxes Consolidation Act 1997, Section 1086 as amended by Finance Act 2016

9. Common Problems Arising on PAYE Audits

While it is not possible to list all of the issues which arise on a Revenue compliance intervention, the following is a list of some of the most common problems, which arise. Bear in mind that Revenue probably knows most of the problems they are likely to encounter during the course of an intervention before he even enters the premises. In any particular business sector, employers tend to make the same mistakes. Also, certain practices become commonplace in specific business sectors and most Revenue officials are very experienced, given that they would typically deal with in excess of a hundred PAYE interventions a year.

Common problems, which arise on Revenue PAYE compliance interventions typically, include the following:

- Cash payments to employees (i.e. paid gross without deduction of Income Tax, PRSI and USC) which do not qualify as tax free payment of expenses. Examples of employees where the employers may fail to operate PAYE include cleaning staff, security staff, casual staff, and temporary staff to cover sick leave absences.
- Payments recorded as management expenses, which are in fact taxable. These payments may be processed through a director's loan account.
- Motor travel rates paid tax free which are either unapproved rates (e.g. rates which exceed the prevailing civil service travel rates), payment for non-existent travel, or for which no proper records or back up documents are available. Also relevant is where the correct civil service rates are used but the incorrect engine size is applied.
- Motoring costs, fuel, servicing, repairs, etc. reimbursed tax free to an employee for using their private car for business use in addition to the employee being paid a tax free civil service travel rate.
- Payment of personal expenses for staff, especially for management, such as the payment of private telephone bills, etc. Revenue will seek explanations for any round sums paid.
- Use of company credit cards by employees for non-business expenditure. It is not unusual for Revenue to examine statements for company credit cards in order to identify possible private expenditure charged to the company, especially where the employee does not reimburse their employer for personal expenditure incurred.
- Deduction of Income tax, PRSI and USC on Benefits in Kind (BIKs), for example professional subscriptions, regular taxis, especially taxis to and from work, medical insurance, goods taken for own use by members of staff and management, etc. The Revenue guidance on professional subscriptions has changed a number of times in recent years. Employers must be careful to adhere to the current guidance available on the Revenue website.
- Where individuals sign for goods such as petrol on a company account, Revenue will examine the records for such accounts to identify people who are not employees (e.g. relatives of management), or where they are employees, to ensure that such goods are not used for personal purposes. Revenue will examine the books and records for incidents where one fuel card is used to fill multiple cars in a single transaction.
- Regarding company cars, Revenue will examine the original market value (OMV) of the car, dates car is available, rate of BIK used, odometer readings at start of the year, end of the year, and service date. Revenue will also examine what records are kept substantiating business travel where a reduced BIK rate is applied.
- Gross pay, allowable deductions such as pension contribution, taxable pay, a review of each pay element and whether taxable or not, and a review of each deduction type and whether it qualifies for tax relief or not.
- The payment of round sum allowances which have not been subjected to PAYE, PRSI and USC.

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- Tax relief allowed on pension contributions in excess of Revenue approved limits. In order for the payroll software to calculate the correct percentage rate, the correct date of birth of the employee must be input. However, not all payroll software monitors these limits based on the employee's age.
- Bonuses such as those paid at Christmas, which are paid gross and are not subjected to tax, PRSI and USC. Always check the correct application of the small benefit exemption.
- Revenue will look for a payments listing (i.e. payments made through accounts payable), primarily to check for regular payments to people who supply personal services on a regular basis to see if such payments should be taxable under the PAYE system as payments to an employee, or indeed tax free payments being made in respect of employees. Some of the most common areas in which these matters arise are as follows:
 - 1) Payments to "consultants"
 - 2) Security staff treated as being self employed
 - 3) Payments to part-time staff
 - 4) Payments to individual cleaners
- Where a large number of cheques are payable to cash, Revenue will always consider that these may be payments to people in the black economy. Where payments are made to the black economy, prosecution will arise if the individual is claiming Jobseeker's Benefit, and the employer can be held liable for the income tax, PRSI and USC due and for the Jobseeker's Benefit actually paid to the "employee". A connected issue may be the non-payment of the national minimum wage.
- A large number of payments made out to cash will also lead Revenue to consider whether these are unrecorded drawings by management.
- Any instances of low drawings, no drawings or irregular drawings, in a private business often leads to suspicion that the true drawings or payments are not being recorded. Revenue may seek to establish how a business owner / director is funding their lifestyle.
- Disposal of company assets to employee at Net Book Value rather than at true market value. This creates a potential BIK issue where they are sold to employees.
- Revenue auditors will often ask the question "Does the payment stand the test of reason?" where unusual or unusually large payments or a series of payments are recorded.
- Information from the public and/or disgruntled employees and competitors often leads to investigations by Revenue.

Finally, everybody who is subjected to a Revenue compliance intervention can expect to have some problems. If there are any issues, which a taxpayer is unsure about, it is recommended that he draws Revenue's attention to these matters before the audit commences.

An employer should also bear in mind that even though his company auditors carry out an annual audit without finding any problems with the PAYE system, the audit which they carry out, bears no resemblance whatsoever to a Revenue intervention/audit. The two types of audit are totally different and when his auditors are carrying out their audit, they will at most carry out a cursory check on the operation of the PAYE system. A Revenue intervention will carry out a much more detailed examination of the taxpayer's records and system and it is likely to focus on the areas which are most likely to throw up problems. A taxpayer can take very little comfort from the fact that his company auditors have found no PAYE problems during their annual audit.

10. Compliance Interventions for PAYE Taxpayers

The Code of Practice for revenue Compliance Interventions applies equally to PAYE taxpayers (i.e. the selection of cases for intervention, the conduct of an intervention, the possible penalties

in the case of default, the procedures for finalising an intervention, appealing against a Revenue decision and settling any additional liabilities where these arise, apply equally to PAYE taxpayers. PAYE taxpayers may avail of the same opportunities to regularise the tax affairs as any other type of taxpayers.

A PAYE taxpayer includes an individual whose:

- Main source of income is taxed under the PAYE system (e.g. employees, people in receipt of an occupational pension), **and**
- Non-PAYE income, if any, (e.g. rental income, dividends, etc.) is taxed by reducing the SRCOP and tax credits of the individual (known as *coding*), **and**
- Gross non-PAYE income, if any, is less than €30,000 **and** net assessable non-PAYE income, if any, is €5,000 or less **and** this net non-PAYE income is taxed by coding it into the individual's Tax Credit Certificate (as above).

Note: where an individual has non-PAYE income in excess of these limits, Revenue consider that individual to be a chargeable person and he is required to register with revenue for Income tax and make annual returns (Form 11). Proprietary directors are regarded as chargeable persons regardless of the level of their other income sources. A proprietary director is a director of a company who is the beneficial owner of or is able to control (either directly or indirectly), more than 15% of the ordinary share capital of the company.

Although taxable, Revenue does not include DSP payments or pensions, or legally enforceable maintenance payments received, when calculating an individual's non-PAYE income.

Note: references to tax also include USC where applicable.

10.1 Compliance Advice for PAYE Taxpayers

Under the PAYE system, an employer calculates and deducts income tax, USC and PRSI liabilities from an employee and pays them over to Revenue on his behalf. Employers make these deductions on the basis of a Revenue Payroll Notification, provided by Revenue, setting out the employee's entitlements to tax credits and rate bands for each payment.

Taxpayers should keep Revenue informed of any changes in basic personal details such as a change of address as well as changes in their circumstances that may affect their entitlement to a tax credit(s). In particular, significant life events such as marriage or civil partnership, cohabitation, separation, or bereavement should be brought to Revenue's attention as soon as possible. Taxpayers should not assume that Revenue will automatically be aware of this information.

PAYE taxpayers should check their TCC annually to ensure that they are entitled to the credits which have been allocated to them by Revenue, and they claim any additional tax credits they are entitled to.

For most PAYE taxpayers, at the end of each tax year, the correct amount of Income Tax, USC and PRSI will have been deducted by their employer from their earnings. In such cases, they will neither be due a refund nor owe any additional amounts. Some tax reliefs (e.g. health expenses) are generally claimed after the year end and entitlements to refunds may arise then.

Instances giving rise to further liabilities include situations where a taxpayer:

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- Was claiming a tax credit or relief which he was not entitled to claim,
- Changed his personal circumstances meaning that a particular credit or relief is no longer due,
- Was previously exempt from tax or USC or was previously liable to USC at a reduced rate, which no longer applies, or
- Has other minor amounts non-PAYE income (not exceeding €5,000), which have not been coded into his Tax Credit Certificate.

PAYE taxpayers should inform Revenue of any other non-PAYE sources of income (e.g. rental income, dividends, casual work (e.g. income from giving grinds, etc.)) as this additional non-PAYE income may be subject to tax or USC or both.

It could also be the case that the taxpayer had overpaid tax and is due a refund. This could occur where a PAYE taxpayer:

- Did not claim a tax credit or relief which he was entitled to claim,
- Changed his personal circumstances meaning that additional tax credits or reliefs are due, or
- Is exempt from tax or USC, or is liable to pay USC at a reduced rate.

A taxpayer must keep all relevant documentation to support claims for tax credits, reliefs, allowances, etc. (e.g. a taxpayer claiming medical expenses must have receipts to support the expenses claimed). All supporting documentation must be kept for a period of 6 years from the end of the year to which the claim or liability refers.

Where taxpayer uploads receipts to the receipts tracker in myAccount or through ROS, they do not need to keep the original receipts.

All taxpayers (including PAYE taxpayers) are responsible for their own tax affairs. An incorrect claim can be made by the taxpayer, by a representative of the taxpayer with full consent, or by a person without the consent of the taxpayer. In all such cases the taxpayer will be required to return the associated (incorrect) amounts to Revenue.

10.2 File a Form 12 if Required

If a taxpayer is requested by Revenue to complete an income tax return (Form 12), they should do so as quickly as possible following the end of the tax year to which it relates. The quickest and easiest way to do this is through myAccount.

At the end of every year, Revenue makes available to employees an Employment Detail Summary and a Preliminary End of Year Statement (PEOYS). The PEOYS is a preliminary calculation only. It will show whether an employee has paid the correct amount of Income Tax and USC for the year and is based on the information held in Revenue's records.

If a PAYE taxpayer wishes to claim additional credits, reliefs or expenses (such as health expenses) or has other incomes to declare, they must complete an Income Tax return. Revenue will then generate a Statement of Liability confirming their position.

10.3 Interest and Penalties

Specific rules for charging interest apply if an underpayment arises due to a PAYE taxpayer incorrectly claiming any tax credit, relief, allowance, rate reduction or exemption to which he or she was not entitled, or due to any refund paid on the basis of incorrect information.

For incorrect claims made after the end of the tax year:

- Interest will be charged from the date the incorrect payments were made to the taxpayer by Revenue to the date the amount is fully repaid to Revenue.

For incorrect claims made during the tax year:

- Where an incorrect claim is made during the year and the Tax Credit Certificate is issued prior to 1st July, interest will be charged from 1st July to the date the liability is fully repaid to Revenue.
- Where the Tax Credit Certificate was issued after 1st July, interest will be charged from 1st January in the following tax year until the liability is fully repaid to Revenue.

Statutory interest will only be applied to the agreed tax liability. The current rate of interest for defaults relating to PAYE taxpayers is 0.0219% per day (approximately 8% per year) on any outstanding balance. Once interest has been applied to the liability it cannot be removed, reduced or appealed.

Where any person knowingly or carelessly assists in or induces another to make or deliver to Revenue any incorrect statement or declaration, he or she shall also be liable to a fixed penalty of €3,000. Penalties for this category of default apply on a per claim basis.

11. Revenue Headline Results for 2022

Revenue completed 427,367 compliance interventions in 2022 which yielded €813 million. This compares to 464,060 compliance interventions carried out by Revenue in 2021 which yielded €1,387 million.

12. Qualifying Disclosure - Case Study

John has just begun his new role of Payroll Manager (March 2023) of a chocolate manufacturer, Chocoholic Delight Ltd, who are Dublin based but have customers throughout the country. John was asked by the Chief Executive, Mary, to review all payroll and expenses payments for the last 3 tax years, as his predecessor, Finola, retired a few months ago. The financial year end for Chocoholic Delight Ltd in respect of Corporation Tax is the 31st December.

Chocoholic Delight Ltd has a number of sales executives who travel extensively throughout the country in the course of their duties. Chocoholic Delight Ltd offer company cars to the sales managers only but the remaining sales staff are expected to use their own vehicles. Employees who do not have a company car are reimbursed at Civil Service travel and subsistence rates in respect of business travel.

John is enthusiastic about his new role and first examines what documentation is retained for the 5 sales managers and the BIK calculations on their company cars. To his surprise the only records are contained in the diary of each sales manager who normally advise the payroll department what BIK rate to apply at the start of the year. The BIK rate currently applied to each company car is 12%. When John enquired why the 12% rate is used, he was told this is what was always done. John establishes that the correct BIK applicable in the last 3 years for 3 of the company cars is the 30% BIK rate. The 3 cars had original market values (OMVs) of €45,000, €48,000, and €50,000, respectively. The correct BIK rate was applied to the remaining 2 cars.

John proceeds to review the travel records of the 15 employees who claimed Civil Service travel and subsistence rates. John confirms that the correct rate has been used for all subsistence claims.

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However, up to date car details have not been recorded for any of these 15 employees since 2018. John determines that 4 employees have incorrectly claimed motor travel at highest engine capacity (1501cc and over) when they were only entitled to claim at the lowest engine capacity (up to 1200cc).

Based on the details of the BIK and expenses discussed above, what should Chocoholic Delight Ltd do to regularise their 2020, 2021 and 2022 tax affairs, presuming they wish to regularise their PAYE affairs and a “Notification of a Level 2 Intervention” has **not** issued from Revenue?

Outline the amount of PAYE (Income Tax, USC, and PRSI (EE and ER), interest and penalties due (if applicable).

Assumptions:

1. Assume that all the employees have all utilised their SRCOP and USC COPs and are Class A for PRSI purposes.
2. Assume that all travel occurred evenly across each year for BIK on company cars and motor travel purposes.
3. These errors are the first such offence in the last 5 years.
4. Assume that the disclosure was made on 21st March 2023.

Notes:

1. PAYE (Income Tax, USC and PRSI) paid by Chocoholic Delight Ltd was:

- €505,561 in 2020
- €604,352 in 2021
- €575,452 in 2022

2. Motor travel of 4 employees who claimed at incorrect motor travel rate:

	Business Travel (kms in 2020)	Business Travel (kms in 2021)	Business Travel (kms from Jan to Aug 2022)	Business Travel (kms from Sept to Dec 2022)
Employee 1	7,526	8,156	1,980	798
Employee 2	12,008	13,543	654	317
Employee 3	11,857	14,875	1,851	675
Employee 4	15,669	16,124	3,154	1,862

3. Civil Service Motor travel rates effective from 1 April 2017:

Rate per kilometre	Engine up to 1200cc	1201cc to 1500cc	1501cc+
First 1,500 km	37.95 cent	39.86 cent	44.79 cent
1,501 – 5,500 km	70.00 cent	73.21 cent	83.53 cent
5,501 – 25,000 km	27.55 cent	29.03 cent	32.21 cent
25,001 km and over	21.36 cent	22.23 cent	25.85 cent

4. Civil Service Motor travel rates effective from 1 September 2022:

Rate per kilometre	Engine up to 1200cc	1201cc to 1500cc	1501cc+
First 1,500 km	41.80 cent	43.40 cent	51.82 cent
1,501 – 5,500 km	72.64 cent	79.18 cent	90.63 cent
5,501 – 25,000 km	31.78 cent	31.79 cent	39.22 cent
25,001 km and over	20.56 cent	23.85 cent	25.85 cent

Calculation of Qualifying Disclosure

Chocoholic Delight Ltd cannot avail of self-correction for 2020 and 2021 as the correction did not take place within the qualifying time limit (i.e. the correction did not take place by the due date for filing the Corporation Tax return for the period within which the relevant PAYE period ends. With an accounting year end of 31st December, the Corporation Tax is required to be filed by the 23rd September of the following year.

Chocoholic Delight Ltd can avail of self-correction for 2022 as the correction took place before 23rd September 2023.

Where the aggregate amount of a person's tax or duty default is less than €6,000 and the default is not in the deliberate behaviour category, the default shall not render that person liable to a penalty. Separate calculations should be completed for each year to determine the correct penalty rate applicable if any.

The underpayment of tax is a deductible expense for the employer, but the interest and penalties are not a deductible expense for the employer.

Summary PAYE Underpayment

Year	Tax Underpayment	Interest amount	Penalty Amount	Total
2020	€18,175.43	€4,801.61	€545.26	€23,522.31
2021	€18,312.05	€3,005.90	€549.36	€21,867.31
2022	€17,061.64	€1,094.31	€0.00	€18,155.95
Totals:	€53,549.11	€8,901.83	€1,094.62	€63,545.56

Car BIK Calculation

Correct Calculation					BIK processed by Employer				Result
	OMV	BIK %	% Year	Annual BIK	OMV	BIK %	% Year	Annual BIK	Under calculation of BIK
Car 1	€45,000	30%	100%	€13,500	€45,000	12%	100%	€5,400	€8,100
Car 2	€48,000	30%	100%	€14,400	€48,000	12%	100%	€5,760	€8,640
Car 3	€50,000	30%	100%	€15,000	€50,000	12%	100%	€6,000	€9,000
								Total:	€25,740

Calculation of Underpayment of PAYE, PRSI and USC - Company Cars

Year	Under calculation of BIK on Cars	IT @ 40%	USC @ 8%	PRSI EE @ 4%	ER PRSI @ 11.05%	Total Underpayment
2020	€25,740.00	€10,296.00	€2,059.20	€1,029.60	€2,844.27	€16,229.07
2021	€25,740.00	€10,296.00	€2,059.20	€1,029.60	€2,844.27	€16,229.07
2022	€25,740.00	€10,296.00	€2,059.20	€1,029.60	€2,844.27	€16,229.07

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Calculation of Overpayment of Civil Service Motor Travel Rates								
Year	Employee	Distance		Rate used	Amount paid	Correct rate	Correct payment	Difference
2020	Employee 1	7,526	km					Overpayment
	1st	1,500	km	€0.4479	€671.85	€0.3795	€569.25	€102.60
	Next	4,000	km	€0.8353	€3,341.20	€0.7000	€2,800.00	€541.20
	Balance	2,026	km	€0.3221	€652.57	€0.2755	€558.16	€94.41
								€738.21
2020	Employee 2	12,008	km					Overpayment
	1st	1,500	km	€0.4479	€671.85	€0.3795	€569.25	€102.60
	Next	4,000	km	€0.8353	€3,341.20	€0.7000	€2,800.00	€541.20
	Balance	6,508	km	€0.3221	€2,096.23	€0.2755	€1,792.95	€303.27
								€947.07
2020	Employee 3	11,857	km					Overpayment
	1st	1,500	km	€0.4479	€671.85	€0.3795	€569.25	€102.60
	Next	4,000	km	€0.8353	€3,341.20	€0.7000	€2,800.00	€541.20
	Balance	6,357	km	€0.3221	€2,047.59	€0.2755	€1,751.35	€296.24
								€940.04
2020	Employee 4	15,669	km					Overpayment
	1st	1,500	km	€0.4479	€671.85	€0.3795	€569.25	€102.60
	Next	4,000	km	€0.8353	€3,341.20	€0.7000	€2,800.00	€541.20
	Balance	10,169	km	€0.3221	€3,275.43	€0.2755	€2,801.56	€473.88
								€1,117.68
2020	Total overpayment							€3,743.00

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Calculation of Overpayment of Civil Service Motor Travel Rates								
Year	Employee	Distance		Rate used	Amount paid	Correct rate	Correct payment	Difference
2021	Employee 1	8,156	km					Overpayment
	1st	1,500	km	€0.4479	€671.85	€0.3795	€569.25	€102.60
	Next	4,000	km	€0.8353	€3,341.20	€0.7000	€2,800.00	€541.20
	Balance	2,656	km	€0.3221	€855.50	€0.2755	€731.73	€123.77
								€767.57
2021	Employee 2	13,543	km					Overpayment
	1st	1,500	km	€0.4479	€671.85	€0.3795	€569.25	€102.60
	Next	4,000	km	€0.8353	€3,341.20	€0.7000	€2,800.00	€541.20
	Balance	8,043	km	€0.3221	€2,590.65	€0.2755	€2,215.85	€374.80
								€1,018.60
2021	Employee 3	14,875	km					Overpayment
	1st	1,500	km	€0.4479	€671.85	€0.3795	€569.25	€102.60
	Next	4,000	km	€0.8353	€3,341.20	€0.7000	€2,800.00	€541.20
	Balance	9,375	km	€0.3221	€3,019.69	€0.2755	€2,582.81	€436.88
								€1,080.68
2021	Employee 4	16,124	km					Overpayment
	1st	1,500	km	€0.4479	€671.85	€0.3795	€569.25	€102.60
	Next	4,000	km	€0.8353	€3,341.20	€0.7000	€2,800.00	€541.20
	Balance	10,624	km	€0.3221	€3,421.99	€0.2755	€2,926.91	€495.08
								€1,138.88
2021	Total overpayment							€4,005.73

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Calculation of Overpayment of Civil Service Motor Travel Rates								
Year	Employee	Distance		Rate used	Amount paid	Correct rate	Correct payment	Difference
2022	Employee 1	1,980	km					Overpayment
Jan - Aug	1st	1,500	km	€0.4479	€671.85	€0.3795	€569.25	€102.60
	Balance	480	km	€0.8353	€400.94	€0.7000	€336.00	€64.94
								€167.54
2022	Employee 2	654	km					Overpayment
Jan - Aug	All	654	km	€0.4479	€292.93	€0.3795	€248.19	€44.73
								€44.73
2022	Employee 3	1,851	km					Overpayment
Jan - Aug	1st	1,500	km	€0.4479	€671.85	€0.3795	€569.25	€102.60
	Balance	351	km	€0.8353	€293.19	€0.7000	€245.70	€47.49
								€150.09
2022	Employee 4	3,154	km					Overpayment
Jan - Aug	1st	1,500	km	€0.4479	€671.85	€0.3795	€569.25	€102.60
	Balance	1,654	km	€0.8353	€1,381.59	€0.7000	€1,157.80	€223.79
								€326.39
2022	Total overpayment for Jan - Aug							€688.75

Year	Employee	Distance		Rate used	Amount paid	Correct rate	Correct payment	Difference
2022	Employee 1	798	km					Overpayment
Sept - Dec	All	798	km	€0.9063	€723.23	€0.7264	€579.67	€143.56
								€143.56
2022	Employee 2	317	km					Overpayment
Sept - Dec	All	317	km	€0.5182	€164.27	€0.4180	€132.51	€31.76
								€31.76
2022	Employee 3	675	km					Overpayment
Sept - Dec	All	675	km	€0.9063	€611.75	€0.7264	€490.32	€121.43
								€121.43
2022	Employee 4	1,862	km					Overpayment
Sept - Dec	All	1,862	km	€0.9063	€1,687.53	€0.7264	€1,352.56	€334.97
								€334.97
2022	Total overpayment for Sept - Dec							€631.73

Calculation of Underpayment of PAYE, PRSI and USC - Motor Travel Rates						
Year	Amount of Expenses now Taxable	Income Tax @ 40%	USC @ 8%	EE PRSI @ 4%	ER PRSI @ 11.05%	Total Underpayment
2020	€3,743.00	€1,497.20	€299.44	€149.72	€413.60	€1,946.36
2021	€4,005.73	€1,602.29	€320.46	€160.23	€442.63	€2,082.98
2022	€1,320.48	€528.19	€105.64	€52.82	€145.91	€832.57
					Total:	€4,861.90

Summary of Calculation of underpayment of PAYE, PRSI and USC										
Year	Tax Underpayment	Monthly equivalent	Interest Days	Interest Rate	Interest amount	Revised Tax Liability	Significant consequences / Self correction	Penalty Rate	Penalty Amount	Total
2020	€18,175.43	€1,514.62	1131	0.0274%	€469.37	€43,644.70	No Significant consequences	3%	€45.44	€2,029.43
		€1,514.62	1102	0.0274%	€457.34	€43,644.70	No Significant consequences	3%	€45.44	€2,017.39
		€1,514.62	1071	0.0274%	€444.47	€43,644.70	No Significant consequences	3%	€45.44	€2,004.53
		€1,514.62	1041	0.0274%	€432.02	€43,644.70	No Significant consequences	3%	€45.44	€1,992.08
		€1,514.62	1010	0.0274%	€419.16	€43,644.70	No Significant consequences	3%	€45.44	€1,979.21
		€1,514.62	980	0.0274%	€406.71	€43,644.70	No Significant consequences	3%	€45.44	€1,966.76
		€1,514.62	949	0.0274%	€393.84	€43,644.70	No Significant consequences	3%	€45.44	€1,953.90
		€1,514.62	918	0.0274%	€380.98	€43,644.70	No Significant consequences	3%	€45.44	€1,941.03
		€1,514.62	888	0.0274%	€368.52	€43,644.70	No Significant consequences	3%	€45.44	€1,928.58
		€1,514.62	857	0.0274%	€355.66	€43,644.70	No Significant consequences	3%	€45.44	€1,915.72
		€1,514.62	827	0.0274%	€343.21	€43,644.70	No Significant consequences	3%	€45.44	€1,903.27
		€1,514.62	796	0.0274%	€330.34	€43,644.70	No Significant consequences	3%	€45.44	€1,890.40
2021	€18,312.05	€1,526.00	765	0.0274%	€319.87	€51,888.67	No Significant consequences	3%	€45.78	€1,891.65
		€1,526.00	737	0.0274%	€308.16	€51,888.67	No Significant consequences	3%	€45.78	€1,879.94
		€1,526.00	706	0.0274%	€295.20	€51,888.67	No Significant consequences	3%	€45.78	€1,866.98
		€1,526.00	676	0.0274%	€282.65	€51,888.67	No Significant consequences	3%	€45.78	€1,854.44
		€1,526.00	645	0.0274%	€269.69	€51,888.67	No Significant consequences	3%	€45.78	€1,841.47
		€1,526.00	615	0.0274%	€257.15	€51,888.67	No Significant consequences	3%	€45.78	€1,828.93
		€1,526.00	584	0.0274%	€244.19	€51,888.67	No Significant consequences	3%	€45.78	€1,815.97
		€1,526.00	553	0.0274%	€231.22	€51,888.67	No Significant consequences	3%	€45.78	€1,803.01
		€1,526.00	523	0.0274%	€218.68	€51,888.67	No Significant consequences	3%	€45.78	€1,790.46
		€1,526.00	492	0.0274%	€205.72	€51,888.67	No Significant consequences	3%	€45.78	€1,777.50
		€1,526.00	462	0.0274%	€193.17	€51,888.67	No Significant consequences	3%	€45.78	€1,764.96
		€1,526.00	431	0.0274%	€180.21	€51,888.67	No Significant consequences	3%	€45.78	€1,752.00
2022	€17,061.64	€1,421.80	400	0.0274%	€155.83	€49,376.14	Self correction	0%	€0.00	€1,577.63
		€1,421.80	372	0.0274%	€144.92	€49,376.14	Self correction	0%	€0.00	€1,566.72
		€1,421.80	341	0.0274%	€132.84	€49,376.14	Self correction	0%	€0.00	€1,554.65
		€1,421.80	311	0.0274%	€121.16	€49,376.14	Self correction	0%	€0.00	€1,542.96
		€1,421.80	280	0.0274%	€109.08	€49,376.14	Self correction	0%	€0.00	€1,530.88
		€1,421.80	250	0.0274%	€97.39	€49,376.14	Self correction	0%	€0.00	€1,519.20
		€1,421.80	219	0.0274%	€85.32	€49,376.14	Self correction	0%	€0.00	€1,507.12
		€1,421.80	188	0.0274%	€73.24	€49,376.14	Self correction	0%	€0.00	€1,495.04
		€1,421.80	158	0.0274%	€61.55	€49,376.14	Self correction	0%	€0.00	€1,483.36
		€1,421.80	127	0.0274%	€49.48	€49,376.14	Self correction	0%	€0.00	€1,471.28
		€1,421.80	97	0.0274%	€37.79	€49,376.14	Self correction	0%	€0.00	€1,459.59
		€1,421.80	66	0.0274%	€25.71	€49,376.14	Self correction	0%	€0.00	€1,447.51
							Total:		€63,545.56	

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Calculation of Interest Days

Year	Return	Due date of return	Date of disclosure / self correction	Interest days
2020	January	14/02/2020	21/03/2023	1131
	February	14/03/2020	21/03/2023	1102
	March	14/04/2020	21/03/2023	1071
	April	14/05/2020	21/03/2023	1041
	May	14/06/2020	21/03/2023	1010
	June	14/07/2020	21/03/2023	980
	July	14/08/2020	21/03/2023	949
	August	14/09/2020	21/03/2023	918
	September	14/10/2020	21/03/2023	888
	October	14/11/2020	21/03/2023	857
	November	14/12/2020	21/03/2023	827
	December	14/01/2021	21/03/2023	796
2021	January	14/02/2021	21/03/2023	765
	February	14/03/2021	21/03/2023	737
	March	14/04/2021	21/03/2023	706
	April	14/05/2021	21/03/2023	676
	May	14/06/2021	21/03/2023	645
	June	14/07/2021	21/03/2023	615
	July	14/08/2021	21/03/2023	584
	August	14/09/2021	21/03/2023	553
	September	14/10/2021	21/03/2023	523
	October	14/11/2021	21/03/2023	492
	November	14/12/2021	21/03/2023	462
	December	14/01/2022	21/03/2023	431
2022	January	14/02/2022	21/03/2023	400
	February	14/03/2022	21/03/2023	372
	March	14/04/2022	21/03/2023	341
	April	14/05/2022	21/03/2023	311
	May	14/06/2022	21/03/2023	280
	June	14/07/2022	21/03/2023	250
	July	14/08/2022	21/03/2023	219
	August	14/09/2022	21/03/2023	188
	September	14/10/2022	21/03/2023	158
	October	14/11/2022	21/03/2023	127
	November	14/12/2022	21/03/2023	97
	December	14/01/2023	21/03/2023	66

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Local Property Tax

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 - 2. Who is liable to pay the LPT**
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-

1. Introduction

Local Property Tax (LPT)¹ is a tax which is payable on the market value of a residential property located within the State. It came into effect in 2013 and is administered by Revenue.

2. Who is liable to pay the LPT?

Any person (individual, partnership, company, organisation, etc.) who holds any interest or right in a residential property on the liability date is liable to pay LPT, unless they have been specifically exempted.

The liability date for LPT is 1st November of the preceding year i.e. the liability date for 2023 was 1st November 2022. For example, if John sold his residential property on 2nd November 2022 he is liable for LPT on that property for 2023 as he owned it on 1st November 2022.

A residential property means any building or structure which is being used as, or is suitable for use as, a dwelling, and includes any shed, garage or other building and any accompanying garden or land up to a maximum of 1 acre. The following persons are liable to pay LPT:

- An owner or a joint owner of a residential property, whether they are residing in or outside the State.
- An owner (landlord) of a rental residential property, where the property is rented on a normal short term lease (i.e. a lease which is less than 20 years).

¹ Finance (Local Property Tax) Act 2012

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- Where housing is provided by a local authority or a social housing organisation, the local authority or housing organisation will be liable (see exception below for local authorities or housing bodies).
- Where an individual occupies a residential property under a long term lease (i.e. a lease which is equal to or greater than 20 years), under a life tenancy, or any other situation permitting the individual to occupy the property on a rent-free basis over an extended period and without challenge to his right of occupation, the occupant will be treated as the owner and will be liable.
- An individual acting as a personal representative for a deceased owner (e.g. an executor/administrator of an estate).
- Where the property is held under trust, the trustees and beneficiaries are jointly and severally liable.

Property owners are liable for LPT from 2022 if the property is leased to a Local Authority or a housing body, and

- The lease is for less than 20 years, or
- The lease was entered into on or after 22nd July 2021 and is for 20 years or more.

Where a property is jointly owned, agreement must be reached between the owners as to who will make the LPT return and pay the tax. Co-owners are jointly and severally liable for LPT, so if no payment is made, Revenue can proceed to collect LPT due from any of the owners.

3. Exemptions

The following residential properties are exempt from LPT:

- A mobile home, vehicle or a vessel.
- A property which is fully subject to commercial rates.
- A sole or main residence which is unoccupied by the owner for 12 months or more due to long term mental or physical infirmity of the owner, where the property is not occupied by any other person.
- Residential property purchased, built or adapted to make it suitable for occupation by a permanently and totally incapacitated individual as their sole main residence. In the case of adaptations, the exemption only applies where the cost of the adaptations exceeds 25% of the market value of the property before it was adapted.
- Properties where ownership is vested in a public body or an approved charitable body and used to provide accommodation to people with special housing needs such as the elderly or people with disabilities.
- Properties used by charitable bodies as residential accommodation in connection with recreational activities that are an integral part of the body's charitable purpose such as guiding and scouting activities.
- A property affected by significant pyrite damage may avail of a temporary exemption, for 6 years from the 1st November of the year in which the property meets the eligibility conditions, provided that the damage has been certified by a competent person such as the National Standards Authority of Ireland. This exemption will not be available to properties which meet the eligibility conditions after 22nd July 2023. Properties who meet the conditions before this date will be exempt for up to 6 years.
- Properties built with defective blocks in Donegal and Mayo. To claim this exemption, property owners will require confirmation of eligibility for the Defective Concrete Blocks Grant Scheme administered by Donegal and Mayo County Councils or an insurance company, or the builder who built the property, has carried out the necessary remediation

work or has provided sufficient funds to carry out the work to the required standard. This exemption applies for a 6 year period from the date (year) in which the exemption commences.

- Registered nursing homes.
- Diplomatic property.

4. Rates of LPT

The rate of LPT depends on the market value of the residential property on the valuation date. The valuation date is the date on which the chargeable value of the residential property is to be established.

For tax years 2013 to 2021 the valuation date was 1st May 2013. For the 3 year period from 2022 to 2025, the valuation date is 1st November 2021. For each consecutive 4-year period after 2025, the valuation date will be 1st November in the year preceding the 4-year period.

Where a property does not exceed €1.75 million, LPT is a set base rate depending on the valuation band that the property falls in to as described below.

Where the property exceeds €1.75 million, LPT is calculated on the value of the property and not the valuation bands as follows:

- 0.1029% of the first €1.05 million,
- 0.25% of the value between €1.05 million and €1.75 million, and
- 0.3% of the value above €1.75 million.

Local Authorities have the power to increase or decrease the base rate of LPT by a maximum of 15%. A full list of counties who either increased or decreased the base rate of LPT for 2023 is available on the Revenue website at: <https://www.revenue.ie/en/property/local-property-tax/valuing-your-property/determining-lpt-charge.aspx>

5. Calculation of LPT

For the purposes of calculating the LPT for a tax year, the owner should firstly ascertain the market value of his property on the valuation date.

The chargeable value is the market value that the property could reasonably be expected to fetch if sold on the open market on the valuation date. Although Revenue has issued guidelines for the valuation of property, the LPT is a self-assessed tax and the responsibility for the valuation of the property rests with the liable person.

Once the market value of the property is known, the owner should then identify which valuation band the property falls into based on the table below. The initial band is €0 to €200,000 with subsequent bands organised in various values up to €1,750,000. Once the valuation band is determined, LPT is a fixed amount based on the band. The following table illustrates the valuation bands and the rates of LPT that apply to each band.

Band Number	Valuation Band	LPT Basic Rate
1	0 – 200,000	€90
2	200,001 – 262,500	€225
3	262,501 – 350,000	€315

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4	350,001 – 437,500	€405
5	437,501 – 525,000	€495
6	525,001 – 612,500	€585
7	612,501 – 700,000	€675
8	700,001 – 787,500	€765
9	787,501 – 875,000	€855
10	875,001 – 962,500	€945
11	962,501 – 1,050,000	€1,035
12	1,050,001 – 1,137,500	€1,189
13	1,137,501 – 1,225,000	€1,408
14	1,225,001 – 1,312,500	€1,627
15	1,312,501 – 1,400,000	€1,846
16	1,400,001 – 1,487,500	€2,064
17	1,487,501 – 1,575,500	€2,283
18	1,575,001 – 1,662,500	€2,502
19	1,662,501 – 1,750,000	€2,721

Example 1

John owns a residential property with a market value of €240,000. His Local Authority did not alter the rate of LPT for the current tax year. Calculate his LPT liability for the current year.

Solution 1

Market Value:

€240,000

Valuation Band:

€200,001 to €262,500

LPT

€200,001 to €262,500 =

€225

Example 2

Mary owns a residential property with a market value of €155,000. Her Local Authority did not alter the rate of LPT for the current tax year. Calculate her LPT liability for the current year.

Solution 2

Market Value:

€155,000

Valuation Band:

€0 to €200,000

LPT

€0 to €200,000 =

€90

Example 3

Simon owns a residential property with a market value of €1,950,000. His Local Authority did not alter the rate of LPT for the current tax year. Calculate his LPT liability for the current year.

Solution 3

Market Value:

€1,950,000

First

€1,050,000 @ 0.1029% =

€1,080

Next

€700,000 @ 0.25% =

€1,750

Balance

€200,000 @ 0.3% =

€600

LPT

€3,430

6. Payment Methods

Revenue has a range of payment methods available to pay LPT. An individual can pay in one single payment or in equal instalments throughout the tax year. LPT can be paid in one single payment by using one of the following methods:

- Debit/Credit card (only available online),
- Bank Single Debit Authority,
- Cash payments through 3 approved payment service providers; An Post, Ominivend, and Payzone. This method is subject to charges by the service provider.

LPT can be paid in instalments using the following methods:

- Direct Debit,
- Cash payment through certain service providers (see above),
- Deduction at source from Salary / Occupational Pension,
- Deduction at source from Social Welfare payments including contributory and non-contributory State pensions and other long-term schemes, or
- Deduction at source from all scheme payments made by the Department of Agriculture, Food and the Marine.

6.1 Key filing and payment dates

The following are the important dates for LPT for 2023:

1st November 2022	This was the liability date for LPT for 2023. The person who owned the property on this date is liable to pay the LPT charge for 2023.
2nd December 2022	This was the last date to submit the LPT return for 2023 confirming the valuation of the property and the payment option.
12th January 2023	Payment date for LPT for 2023 where full amount is paid by cash, cheque, postal order, credit card or debit card, or for confirming that the liability will be paid in full by Single Debit Authority.
15th January 2023	Direct debit payment date. Further debits will be on the 15 th of each month throughout the year.
21st March 2023	Due date for single debit authority.

7. Electronic filing of LPT Return

The following persons are required to file electronically:

- An individual who owns more than one residential property,
- An individual who is already subject to electronic filing, and
- A company that also owns residential properties.

Electronic filers can pay LPT by a one off payment or on a phased basis using any of the options outlined above.

8. Deduction through Payroll

There are 2 circumstances under which LPT may be deducted from an employee's salary/occupational pension as follows:²

² Finance (Local Property Tax) Act 2012, Section 66

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- Where the individual elected in his LPT return to have all or part of his LPT deducted from his salary/occupational pension, (if this payment method is availed of in the current tax year, it automatically applies in subsequent years unless Revenue is advised otherwise), or
 - Where Revenue enforces the collection of LPT via deduction from salary in any circumstances where the individual otherwise fails to make an LPT return or fails to pay the liability by another means.

Where an employee opts to pay the LPT by deduction from salary, or collection is enforced by Revenue, Revenue will notify his employer of the amount to be deducted via the RPN. The employee's copy of the Tax Credit Certificate has not been amended to include LPT. The employer will not be informed of the value of the property.

LPT should be deducted equally over each remaining pay period (weekly, fortnightly, four-weekly or monthly as appropriate) in the tax year, following the receipt of the Tax Credit Certificate.

Example 4

John's LPT liability for this year is €405 and he has elected to have it deducted from his wages. Calculate the amount to be deducted from his weekly wages from January to December.

Solution 4

Weekly LPT liability: $\text{€}405 / 52 \text{ weeks} = \text{€}7.78$

Note: The weekly/fortnightly/monthly liability is rounded down in the employee's favour.

LPT is a statutory deduction from wages and where applicable, LPT should be deducted from an employee's net emoluments. Net emoluments are defined as emoluments which are taxable under the PAYE system (e.g. salary, wages, holiday pay, bonus, benefit-in-kind, ASC refunds, etc.) less allowable deductions which qualify for tax relief, income tax, PRSI and USC. This definition also includes refunds of tax, USC and PRSI.³ LPT will take precedence over other voluntary or contractual deductions such as deductions for medical insurance, savings schemes, trade union fees, social clubs, etc.

Note: In this text we refer to the LPT being deducted from an employee's net emoluments so as to avoid confusion with an employee's net pay (net take home pay). Net emoluments is the amount before voluntary deductions, whereas the employee's net take home pay is the amount left after all deductions have been made.

The following are the allowable deductions/contributions which qualify for tax relief under the PAYE Regulations:

- Contributions to a Revenue approved occupational pension scheme including AVCs
 - Contributions to a Personal Retirement Savings Account (PRSA) including AVCs
 - Contributions to a Retirement Annuity Contract (RAC)
 - Contributions to a Revenue approved Permanent Health Insurance (PHI) scheme
 - Deduction of the Additional Superannuation Contribution (ASC) payable by public servants.

³ Finance (Local Property Tax) (Amendment) Act 2013, Section 11.

In summary, pension contributions and Revenue approved salary sacrifices up to the maximum tax allowable limits, PAYE, PRSI, USC and ASC all take priority over LPT.

Example 5

An employee is paid €600 per week and makes a pension contribution of €50 per week. His employer has received an RPN from Revenue containing a tax credit of €3,550 and SRCOP of €40,000 and the standard USC COPs. It also contained LPT of €315 which is to be deducted from the employee. Calculate his weekly net take home pay assuming he is taxed on the Week 1 Basis.

Solution 5

Salary		€600.00
Less Pension		<u>€50.00</u>
Taxable Pay		€550.00
 SRCOP		
	€40,000 / 52 =	€769.24
 Gross tax:		
	€550 @ 20% =	€110.00
Less tax credit		<u>€3,550 / 52 =</u>
Tax liability		€41.73
 PRSI		€24.00
USC		
Income up to Rate 1 COP		€231 @ 0.5% =
Excess pay to Rate 2 COP		€4.19
Balance of pay at Rate 3		€12.50
 LPT		
Net take home pay		<u>€6.05</u>
		€465.72

LPT should not be deducted from:

- The reimbursement of tax free expenses,
- The payment of Revenue approved tax free travel and subsistence payments,
- A post-cessation payment (including a post-cessation refund of ASC) made to a former employee, or
- An employee who holds a PAYE Exclusion Order as an RPN is not issued where a PAYE Exclusion Order is in place.

8.1 Attachment of Earnings Order

Where an employer has received an Attachment of Earnings Order (AEO) for an employee this will take priority over LPT where the AEO was in place prior to the direction from Revenue to deduct LPT. On a similar note, if the LPT instruction is in place prior to the AEO, LPT takes priority.

8.2 Multiple Employments

If an employee has multiple employments, where LPT is to be collected by deduction from salary, it will be included on the RPN of one employer only at any one time. The LPT liability cannot be split out over multiple employers at the same time. The employer should always act in accordance with the latest RPN received from Revenue, and only deduct LPT when specified on the RPN.

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8.3 Insufficient Pay

Where an employee has insufficient pay in a particular pay period to meet the full LPT liability, the employer is only required to deduct the amount of LPT that the net emoluments will permit.

Example 6

Revenue issued an RPN to Mary's employer which contained LPT of €405. Mary's employer has deducted LPT of €33.75 per month (€405 / 12) for January to June inclusive. Due to a new RPN being applied in July, Mary's net emoluments are €20.00. How will the employer collect the LPT of €33.75 due in July?

Solution 6

Mary's employer is only obliged to deduct an amount of LPT that the net emoluments will permit.

Net Emoluments this pay period	€20.00
Maximum LPT deducted this pay period	<u>€20.00</u>
Net take home pay this period	€0.00

The balance of €13.75 will be carried forward and collected over the remaining pay periods in the year. The LPT deduction for August to December will be revised to include the €13.75 which was carried over from July as follows:

LPT deduction notified from Revenue:	€405.00
Less LPT deducted in January - June	€33.75 x 6 months = €202.50
Less LPT deducted in July	<u>€20.00</u>
Balance of LPT outstanding	€222.50
	€182.50

$$\text{Revised LPT liability for August to December} \quad €182.50 / 5 \text{ months} = \quad €36.50$$

Where the employee is on unpaid leave for a period of time and the employer is unable to deduct LPT from the employee, the employer is not responsible for paying over the LPT to Revenue on behalf of the employee. Instead the employer should try and collect the outstanding amount as soon as reasonably practicable on the employee's return to work, assuming he returns to work before the end of that tax year.

Where an employee is absent on unpaid leave at the end of the tax year and it is not possible for the employer to collect the full amount of LPT from the employee, this will be a matter for Revenue to address with the individual.

Example 7

Revenue issued an RPN to Joan's employer which contained LPT of €495. The employer deducted LPT of €412.50 (€41.25 x 10 months) from January to October inclusive. Joan has taken unpaid maternity leave from 1st November and will not return to work until next year. What is the employer's responsibility for the LPT amounts due for November and December assuming that there are no tax or USC refunds due to Joan?

Solution 7

Joan's employer cannot deduct any LPT in November and December as she will not be in receipt of any net emoluments. The outstanding LPT of €82.50 (€495 - €412.50) will be a matter for Revenue to take up with Joan. The employer is not responsible for paying this over to Revenue

on her behalf. However, the employer is responsible for notifying Revenue of any shortfall before the end of the tax year (see section 9 below).

8.4 Holiday Pay in Advance

Where an employee is paid holiday pay in advance, the LPT liability for the period should be brought forward. For example, if an employee is paid wages for three weeks to include pay for the current week plus two weeks' holiday pay, then the employer should deduct 3 weeks' LPT payments.

8.5 Week 53

If a week 53 payroll arises, LPT should not be deducted in week 53 if the full amount has already been collected up to week 52. Otherwise, any outstanding amount of LPT should be deducted in week 53.

8.6 Starters and Leavers

If an employee commences or leaves employment mid-month the LPT should be deducted as instructed on the RPN in the normal way for that pay period, regardless of the number of days the employee is being paid for, assuming there is sufficient payment. For example, if an employee is leaving on the 10th of the month, the full monthly amount of LPT should be deducted. Similarly, where an employee commences employment mid-month, the full monthly LPT liability should be deducted assuming the RPN contains an amount of LPT.

8.7 Overpayments of LPT

Where the amount of LPT remitted by the employer to Revenue exceeds the individual's LPT liability, any refund due will be issued by Revenue directly to the employee. The employer is not responsible for issuing LPT refunds to an employee. This may occur where Revenue tried to enforce the collection of LPT from individuals who do not actually own a residential property. A Payroll Submission does not permit a negative entry for LPT.

9. Returns to Revenue

On or before making a payment to an employee, an employer is obliged to make a Payroll Submission to Revenue which should include the amount of LPT deducted from each employee.

The employer is obliged to include the amount of LPT deducted from each employee in his Monthly Return which must submitted to Revenue by 14th of the following month with the corresponding liability paid over to Revenue by 23rd of the following month.⁴

Where the employer takes no action to submit the Return, the amount of LPT contained in the Monthly Statement made available by Revenue will be deemed to be a declaration by the employer of the LPT liability for that month. Where the Monthly Statement does not accurately reflect the LPT liability, the employer is responsible for making any corrections as necessary to ensure the accuracy of the Return.⁵

Strictly speaking, where an employer is unable to collect LPT from the employee in any particular pay period because of insufficient net emoluments, the employer is obliged to notify Revenue of the amount of LPT which he was unable to deduct for that pay period.⁶ Revenue relaxed this

⁴ Finance (Local Property Tax) Act 2012, Section 74, as amended by Home Building Finance Ireland Act 2018

⁵ Finance (Local Property Tax) Act 2012, Section 79, as amended by Home Building Finance Ireland Act 2018

⁶ Finance (Local Property Tax) Act 2012, Section 72(5)(b)

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provision and only require employers to make such returns where it is evident that the employee will be absent for a period of time (e.g. where an employee is absent on unpaid leave), and the employer will be unable to collect the full amount of LPT before the end of the tax year. The employer should notify Revenue of the amount of LPT which he is unable to deduct via myEnquiries (as the employer will be transmitting sensitive information i.e. employee names, PPSN, and LPT amounts) by selecting “LPT” from the drop down menu in the “Enquiry Relates To” field, and “LPT Employer Query” from the drop down menu in the “More Specifically” field.

Where an employer fails:

- To remit LPT to Revenue or remits an amount which is less than the amount stated on the Payroll Submission, or
- To notify Revenue of the fact that the employee had insufficient net emoluments to meet the liability.

Revenue may issue a demand for the payment.⁷

Employers are required to keep records relating to LPT for a period of 6 years. The records should include the net emoluments paid to the employee, the amount of LPT deducted from the employee and confirmation of the payment of LPT to Revenue. Such records should be available to Revenue for inspection when requested.

10. Payslips

Employers are obliged under the **Payment of Wages Act 1991** to show the nature and amount of any deduction from the employee’s wages on the employee’s payslip. LPT deductions should be displayed as a separate entry on an employee’s payslip.

Revenue will accept a deduction shown on an employee’s payslip as evidence of his compliance. Where the LPT is not subsequently paid over by the employer the employee will not be liable for any non-payment.

11. Deferrals

Where an owner-occupier of a residential property is unable to pay the LPT due to having insufficient income, a deferral scheme is available.⁸ A deferral does not exempt the property from the LPT; it simply defers the payment until a later date and will attract a deferral interest charge. A deferral can only be availed of in respect of a property occupied by the liable person. It cannot be availed of in respect of rented properties.

An owner occupier can apply for a deferral in the following circumstances:

- Where there is no mortgage and the gross income does not exceed €18,000 for an individual or €30,000 in respect of a married couple, civil partnership or cohabitants respectively in a tax year. A cohabitant is defined in the **Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010** as someone who is in a relationship with another adult for at least 2 years where they are the parents of one or more dependent children, or 5 years in any other case.
- Where an individual/couple’s income exceeds the above limits by a maximum of €12,000, they will have the option of deferring up to 50% of the LPT liability.

⁷ Finance (Local Property Tax) Act 2012, Section 75

⁸ Finance (Local Property Tax) Act 2012, Part 12

- Where there is a mortgage and the gross income does not exceed €18,000 plus 80% of expected gross interest payments for an individual or €30,000 plus 80% of expected gross interest payments in respect of a married couple, civil partnership or cohabitants respectively in a tax year.
- Where there is a mortgage and the individual/couple's income exceeds the above limits by a maximum of €12,000, they will have the option of deferring up to 50% of the LPT liability.
- For the duration of a Debt Settlement Arrangement or a Personal Insolvency Arrangement.
- Where a person has suffered a significant financial loss or incurred a significant expense. Revenue must be satisfied that the individual cannot pay the LPT without excessive financial hardship as a result of the loss or expense.
- Where a personal representative of a deceased person's estate is responsible of the payment of the LPT, it can be deferred for up to 3 years to allow for the administration of the estate.

Deferral interest is charged on deferred amounts at the rate of 0.008% per day (3% per year) since 1st January 2022.

The deferred amount, including deferral interest, will remain as a charge on the property until such time as it is discharged by the liable person or until such time as the property is sold, subject to the condition that the amount of LPT deferred does not exceed the value of the property.

12. Interest and Penalties⁹

Interest shall be payable by an individual or an employer where the LPT is not paid by the due date or the last day in the period within which the LPT is payable (e.g. where an employer does not deduct the LPT in the time period specified in the instruction received from Revenue, the outstanding amount shall be liable to interest).

Where applicable, interest shall be calculated based on the formula:

$$T \times D \times R$$

Where:

T = amount of LPT which remains unpaid

D = number of days (including part of a day) for which the LPT remains unpaid

R = the rate of 0.0219% per day (approx. 8% per year).

Where an employer fails to:

- Deduct LPT from an employee where instructed by Revenue,
- Submit a Monthly Return or remit LPT to revenue within the appropriate time limits,
- Keep records and make them available for Revenue inspection, or

that employer shall be liable to a penalty of €3,000.

Where the employer fails make a Payroll Submission to Revenue on or before the date the employee is paid, a penalty of €500 will apply for each month or part of a month during which the Submission remains outstanding, subject to a maximum penalty of €3,000.

A company secretary shall also be liable to a separate penalty of €2,000.

⁹ Finance (Local Property Tax) Act 2012, Part 14 as amended by Home Building Finance Ireland Act 2018

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Where an individual fails to deliver a return to Revenue he shall be liable to a penalty equal to the true amount of LPT that would be due, subject to a maximum amount of €3,000.

13. Miscellaneous Issues

Tax Clearance will not be issued to any person who defaults on his LPT.¹⁰ In addition, non-payment of LPT may result in an income tax surcharge of 10% for the self-employed in addition to the LPT liability and any interest.

Where a residential property is sold, the purchaser must report any under declaration of LPT by the previous owner. Otherwise, the purchaser may be liable to a penalty of €500.¹¹

As the LPT is a self-assessment system, it reduces the likelihood of appeals being made by the liable person. However, for an appeal to take place, it should be noted that the LPT must be paid first before an appeal can be lodged with the Tax Appeals Commission.

¹⁰ Finance (Local Property Tax) Act 2012, Section 129

¹¹ Finance (Local Property Tax) (Amendment) Act 2013, Section 8

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Employed or Self-Employed

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-

1. Introduction

How a person pays income tax and what class of PRSI contributions are payable on his income is determined by whether he is employed, or self-employed. The class of PRSI contributions which a taxpayer pays affects his entitlement to certain benefits from the Department of Social Protection (DSP) (e.g. Illness Benefit, Jobseeker's Benefit, State Pension (Contributory), etc.). It is important therefore, to know whether an individual is employed or self-employed.

Employees have income tax, PRSI and USC deducted at source under the PAYE system. Self-employed people make their own tax returns under the self-assessment system. They pay their own income tax, PRSI and USC contributions directly to Revenue. No employer PRSI is payable in respect of self-employed individuals who pay PRSI under Class S.

Thus, the cost to employers, particularly of PRSI and statutory responsibilities, means that many employers may wish to arrange their working practices by contracting out activities to self-employed contractors. One of the early examples of this was the Dublin milk distribution business, whereby milkmen could purchase milk vans and routes and become self-employed contractors. Increasingly, individuals are engaged on a self-employed basis. While this may seem like an attractive option for both parties concerned; Revenue, DSP, Workplace Relations Commission (WRC) and the Courts do not simply accept the label given to the relationship by the parties, but will in fact closely analyse the legality of the entire situation.

The terms “**employed**” and “**self-employed**” are not defined in law. The decision as to which category a person falls into must be arrived at by looking at what he actually does, the way he does it and the terms and conditions under which he is engaged. All terms and conditions must be considered, whether they are written, verbal or implied. It is not simply a matter of the employer, or the person employed, deciding between themselves that they should operate on an employed, or a self-employed basis.

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A Code of Practice for Determining Employment Status is available on the Revenue website at: <http://www.revenue.ie/en/self-assessment-and-self-employment/documents/code-of-practice-on-employment-status.pdf>.

2. Contract of Service and Contract for Services

A person, who is an employee, is employed under a **contract of service**, whereas a self-employed person is one who is engaged under a **contract for services**.

In order to determine which situation applies in any given case, Revenue and the DSP review the contractual relationship between the two parties. It is the facts of the case, which determine the correct treatment for tax purposes, not what the two parties agree among themselves. It is common for people to decide that they should be treated as self-employed for taxation purposes, under the belief (often incorrect) that they will pay less tax. This arrangement often suits employers, since they are not liable to pay employer PRSI for self-employed people, nor do self-employed people normally receive sick pay, holiday pay, or public holiday entitlements.

Revenue or the Scope Section of the DSP will be happy to advise if there is any uncertainty as to whether a person is employed, or self-employed. Having established the relevant facts, either Revenue or the Scope Section will give a written decision as to the correct status. However, it has to be said that they will usually rule that a person is an employee, unless a compelling argument in favour of self-employment is put forward.

In a case being heard by the WRC, an Adjudication Officer will determine the employment status as a preliminary issue before deciding whether they have the authority to hear the case.

A decision by one Department will generally be accepted by the other, provided all of the relevant facts at the time and the circumstances remain the same. However, that is not always the case as the Revenue Commissioners are not bound by a decision of the WRC or the DSP, and the reverse is also true.

In most cases, it will be clear whether a person is employed or self-employed. An employee normally works under the control of, or as part of, the business of another. An example would be where a person is working for a company in the payroll department of that company.

A self-employed person normally sets up in business on his own account. An example would be where a person has his own newsagents shop and bears responsibility for the success, or failure, of that business. A person is also regarded as self-employed if he is in partnership, sharing in the control and in the success, or failure, of the business. However, it may not always be so obvious, and you may find that it is unclear where the dividing line falls.

When trying to determine the employment status of an individual, it is important that consideration is given to the situation as a whole, including all the working conditions, when considering the guidelines. The same guidelines generally apply for tax, PRSI and employment law purposes.

3. Key Factors in Determining Employment Status

When considering the employment status of an individual, the Code of Practice states that certain key factors will be taken into account. These factors themselves are not definitive in determining employment status, but when looked at collectively it may help when making a determination as to the correct employment status.

3.1 Mutuality of Obligation

One of the characteristics of a contract of service is that there is an obligation on the employer's part to provide work on a regular basis which the employee has to perform. The Irish and UK courts have regarded mutuality of obligation as the most important factor, and it is usually dealt with as the primary issue. If it is found that there is no obligation to either provide or accept work, then the other factors will not even be looked at.

If, on the other hand, a mutual obligation to provide and undertake work is found to exist, the other factors must then be assessed. The courts will look at what is happening in practice (i.e. the reality test) as well as the terms of the contract. A line in a contract to state that a mutuality of obligation does not exist is not sufficient to show that it does not exist in real terms. Work relationships can change over time, and while mutuality of obligation may not have existed at the beginning, it may be established over time where working hours/days become more regularised, and an understanding develops (whether written or not) that the individual attends for work on particular days or times.

The right to accept or reject each offer of work and the freedom to take other work between contracts are not indications of self-employment. This situation could arise if an employee worked a series of contracts with the employer. An individual may carry out work at various intervals for an employer, and while a mutuality of obligation may not exist for the overall period, it may exist for each individual period they are engaged.

Some key questions to consider are:

- How is work offered and accepted?
- Do the pay records suggest work is in fact done continuously?
- How often has work been refused?
- If work is refused will the employer offer work in the future?

Case Law: Monnie McKayed and Forbidden City Ltd t/a Translations.ie [2016] IEHC 722

The individual was an Arabic translator. He worked for the company providing interpretation services including asylum seekers and suspects being interviewed by Gardaí. He made a successful claim for unfair dismissal to a Rights Commissioner. The company appealed the decision to the Employment Appeals Tribunal, who reversed the decision on the basis that he was not an employee of the company but an independent contractor.

The company produced several documents including one called "Declaration of Interests". In this document, the individual agreed to abide by the rules and standards of the company, not to engage in any practice which could negatively impact the company and not to work for any competitor of the company unless he declared this.

In return, the company agreed to prioritise him for work in his field and endeavour to maintain sufficient work for him.

The individual appealed to the High Court. The court found that the company was not under a contractual obligation to provide work into the future for the individual. As there was no mutuality of obligation there could not be an employer and employee relationship.

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3.2 Use of a Substitute

When considering this, you should ask “can the person use a substitute?” in the event that they are unable or unwilling to do all or part of the work themselves, and if so, who engages and pays the substitute?

If the person is free to subcontract the work or hire other people to do the work which the person has undertaken, on their own terms, then the person is likely to be self-employed. For example, if a business engages a painter to paint its offices, and the painter sends along a subcontractor to carry out the work, so long as the work is done to your satisfaction you are not likely to complain because your contract with the painter is to have a service provided and not necessarily one which he personally has to provide. You are unlikely to be concerned whether the painter carries out the work himself or uses a substitute to carry out the work.

Whereas, if the person could organise a substitute, with the prior approval of the employer, and the substitute is paid by the employer, then it is more likely that the person (and the substitute) would be considered an employee of the employer. For example, a company engages an IT engineer to carry out IT work, and the engineer becomes sick and is unable to do the work. The work needs to be completed within a specified period so the engineer sources another suitably qualified individual. The company approves of the substitute and pays the individual directly.

In this instance, it would appear that the employment relationship has merely been passed on from the IT engineer to the substitute and they would both be considered to be employees, however all factors must be considered in reaching any decision.

The following questions help to clarify if it is possible to use a substitute:

- Must the worker do the job personally or can he send a stand-in or use helpers?
- If substitutes or helpers can be provided –
- Is there a specific provision to that effect in the contract?
- In what circumstances can they be provided?
- Who makes the decision to engage and then recruit the substitutes?
- Are any restrictions imposed on their use by the business?
- Who pays the substitutes?

3.3 The Enterprise Test

The central question in the Enterprise Test is whether or not a worker is in business on their own account, operating as an independent economic unit who is exposed to financial risk through the carrying out of their work and is able to profit from the sound management of the business.

Self-employed individuals normally have the chance of profit or the risk of loss. This is because they can pursue and accept contracts as they see fit. They can negotiate the price (or unilaterally set prices) for their services and have the right to offer those services to more than one customer. Self-employed individuals will normally incur expenses to carry out the terms and conditions of their contracts and will manage those expenses to maximise net earnings. Developing on from this, are such factors as whether or not the person provides major items of equipment and his own helpers and the extent to which he is exposed to financial risk by undertaking the work. It is an indication of self-employment if a worker has to make good faulty work at his own expense or if he can profit financially from the efficient management of the work.

Employees normally do not have the opportunity to make a profit and they do not normally run the risk of suffering a financial loss, even though their pay can vary depending on the terms of

their employment. For example, employees working on a commission or piece-rate basis, or employees with a productivity bonus clause in their contract, can increase their earnings based on their productivity. This increase in an employee's pay is an expense for an employer and is not normally viewed as a profit, which is the excess of income over expenses. Apart from liquidation, redundancy or reduced hours scenarios, employees generally do not suffer the financial losses incurred by the employer's business.

It is possible for a person to work for several different employers on a part time basis and still be considered as employed under a contract of service.

The questions to ask in relation to the entrepreneurial test are:

- Has the worker invested any capital in the business?
- Could the worker suffer financially or make a loss on the project or work?
- Does the worker have to meet the cost of expenses incurred in the performance of the work?
- Can the worker make a profit by reducing the costs associated with the work?
- Does the worker pay for insurance cover such as public liability?
- Is the worker also an employer?
- Who supplies/owns the tools and equipment used by the worker?
- Who pays for repairs and maintenance of the tools and equipment used by the worker?
- Whether the worker is paid a flat rate or regular intervals?
- Who chooses the method and amount of pay?

3.4 The Integration Test

This integration test examines the extent to which an individual has become an integral part of a business, as opposed to carrying out work that, although done for the business, is peripheral or accessory to it. It is more likely that an individual will be regarded as an employee of the business if he forms an integral part of the business and is able to make decisions on behalf of the business.

The following questions should help to establish if a worker is an integral part of the business:

- How does the worker fit within the organisational structure, do they have a role or title?
- Who is the worker answerable to?
- Is he responsible for the work of any other workers or do other employees report to him?
- Does the worker participate in performance management systems or company training programmes, and is he permitted to apply for internal promotion?
- Is the task self-contained i.e. does the worker offer a specific service or produce a particular item?
- Does the worker present himself to customers as a representative of the organisation?
- To what extent does the worker use company facilities such as a uniform, tools/equipment, etc.?
- Has he got a business card and if so, how is he described on it?
- Is he listed in the internal phone directory, or has he got an email address, and if so, is it similar to that of other employees, or does his email signature describe his role? **Note:** some businesses require external contractors to use their internal email addresses for security reasons.

3.5 The Control Test

The right of control over a worker is a significant indicator of a contract of service. A worker, who has to comply with instructions as to where, what, when and how work is carried out, is ordinarily an employee.

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It will not always be necessary for the employer to instruct the worker, particularly where workers have developed particular skills. The employer is merely required to retain that right. The actual degree of control will vary with the type of work and the skills of the worker. Control of an employer over an employee can be perceived through forms of verbal or written instructions, through manuals provided or procedures in place. Where control is not a factor this could either be an indication of the employee's level of skill or that the worker is self-employed.

The following questions will help to clarify where, what, when and how work is carried out:

- Who decides what work is to be done?
- Does a notice period exist in the contract?
- Can the worker be moved from project to project as priorities change?
- Who decides where and when the work is to be done and how much of it is carried out on the employer's premises?
- To what extent does the payer control the method and amount of pay?
- Is there any flexibility over hours and if so, what are the limits?
- What are the arrangements for breaks?
- What notice, if any, must the worker give regarding absence due to illness or annual leave?
- Has the worker got a particular skill which means that the employer does not need to tell him how to do the job?
- If the worker uses his discretion over what, when, where and how work is done, can his decision be over-ruled?
- If work is substandard, can the worker be told to do it again?
- Must the worker follow any regulations, behaviour, etc. that are in place in the business?
- Does the worker require permission before working for anyone else at the same time?
- Is there any training required on how to do the job? **Note:** a self-employed individual may receive training to allow them to carry out tasks within a specific business (e.g. unique features of an IT system) without losing their independence.

4. Other factors to Consider in Determining Employment Status

4.1 Contract of Engagement

The contract between the worker and the employer will be reviewed to help determine the terms and conditions of the relationship. If there is a difference between what is stated in the written contract and the manner in which the operations are being carried out by the worker, the contract will be understood to have been altered or amended by the day-to-day operation of that contract.

The following factors should be considered:

- Establish the full terms of the contract. This includes written, oral, expressed or implied terms, or indeed a combination of all four.
- Are other workers doing similar duties and if so, are they employed or self-employed?
- Has the worker been previously employed in the business, if so when was the change and what are the differences in the current terms of engagement?
- How was the work obtained? If it was advertised, is there a copy of the advertisement?
- Was the worker interviewed and what information was received about the work?
- What is the reporting procedure?
- What instructions were given?
- What is the work pattern and how is work allocated?
- Is the worker paid for annual leave and public holidays?
- Can the employee avail of the employer's sick pay scheme, if any?

In Henry Denny & Sons (Ireland) Ltd, T/A Kerry Foods v Minister for Social Welfare the Courts considered whether a supermarket demonstrator was engaged under a contract for services or a contract of service. The following statements in the contract were considered by the Supreme Court, but were deemed not to be contractual terms and therefore had little or no contractual validity. They are only the opinion of the contracting parties.

- “You are deemed to be an independent contractor”,
- “It shall be your duty to pay and discharge such taxes and charges as may be payable out of such fees to the Revenue Commissioners or otherwise”,
- “It is agreed that the provisions of the Unfair Dismissal Act 1977 shall not apply etc.”
- “You will not be an employee of this company”,
- “You are responsible for your own tax affairs”.

4.2 The Reality Test

The Reality Test simply looks at the actual reality of the working relationship, disregarding anything that may have been previously agreed by both parties.

The Reality Test was first seen in **Kirwan v Dart Industries and Leahy (1980)**. Dart Industries was an international organisation, which manufactured Tupperware. Mr Leahy was the distributor for a certain part of Ireland. Ms Kirwan sold Tupperware for Mr Leahy. She was given a car by Mr Leahy which was taxed and insured, but for which Ms Kirwan paid the running costs. Ms Kirwan earned commission on the sales of the Tupperware dealers she trained.

In determining her status, the EAT looked at the reality of the situation. Kirwan had some freedom as to her work, but ultimate control rested with Leahy. Kirwan was an integral part of the company's distribution. The car was an inducement to succeed. In deciding that Kirwan was engaged under a contract of service i.e. an employee, the Tribunal stated the proper approach was to "consider the reality of the situation, consider all the aspects, no single one is decisive".

4.3 Provision of Equipment

In some industries it is customary for a worker to supply particular tools and equipment at no cost to the employer, e.g. a carpenter providing his own hand tools or a chef supplying his own knives. However, significant investment by the worker in the provision of equipment necessary for the job could affect the substance of the contract and is more indicative of a contract for services.

The questions to consider are as follows:

- What equipment is necessary to do the job?
- What is the approximate cost of the equipment?
- Who provides the equipment?
- Who is responsible for the cost of its upkeep, running costs, fuel, insurance, etc.?

4.4 Exclusivity

Exclusive rights to service indicate that the worker is an employee, whereas a self-employed contractor may work for several different contractors at the same time. It is important to differentiate between the independent contractor and the employee who works in a number of part-time jobs. The right to personal service is not proof of a contract of service, but a contract of service cannot exist where there is no such right.

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4.5 Location

Working on the employer's premises and use of the employer's facilities is more common for employees than for self-employed. However this is not always the case and the location of the work must be looked at in the context of all the other tests. It is not, in itself, an indication of employment or self-employment.

4.6 Remuneration

Employees are usually paid a fixed rate at regular fixed intervals. They may also receive subsistence and/or travel payments, overtime, sick pay, holiday pay, etc. However, payment on receipt of an invoice or any other mutually agreed method is not an automatic indication of self-employment.

It is important to establish the reasoning behind the method of payment and the following questions will help clarify the issues surrounding the payment:

- On what basis is pay calculated e.g. hourly, weekly, commission, by the piece-rate, etc.?
- How was the pay arrangement fixed in the first place?
- To what extent do payments fluctuate?
- What is the frequency of payment?
- Who is responsible for making payment?
- Is payment made for expenses, subsistence or travel?
- Does the business provide any benefits to the worker?
- Does the worker issue invoices and receipts?
- Is the worker registered for VAT and does he charge the employer VAT?

5. Characteristics of an Employee

The following facts would normally indicate that a person is an employee, if he:

- Is under the control of another person who directs how, when and where the work is to be carried out,
- Supplies labour only,
- Receives a fixed hourly/weekly/monthly wage,
- Cannot sub-contract the work,
- Does not supply materials for the job,
- Does not supply equipment, other than the small tools of the trade,
- Is not exposed to personal financial risk in carrying out the work,
- Does not assume responsibility for investment and management in the business,
- Does not have the opportunity to profit from sound management in the scheduling of engagements or in the performance of tasks arising from the engagements,
- Works set hours, or a given number of hours per week, or per month,
- Works for one person, or for one business only,
- Receives expense payments to cover subsistence and/or travel expenses,
- Is entitled to extra pay, or time off, for overtime.
- Is entitled to sick pay, holiday pay, pension, etc.,
- Is obliged to perform work on a regular basis that the employer is obliged to offer them (mutuality of obligation), and
- Has his tax deducted from his wages through the PAYE system.

A person could have considerable freedom and independence in carrying out his work and still remain an employee:

- If he is paid by commission, by share, or by piecework,
- If he works for more than one employer at the same time,
- If he does not work on the employer's premises,
- If he has specialist knowledge and it is not feasible for him to be directed as to how the work is to be carried out.
- Some employees may also be self-employed in respect of other work they carry out.
- If tax is not deducted through the PAYE system, this does not automatically mean the person is self-employed.

6. Characteristics of Self-Employment

The following facts would normally indicate that a person is self-employed; if he:

- Owns his own business,
- Is exposed to financial risk, by having to bear the cost of making good faulty or substandard work carried out under the contract,
- Assumes responsibility for investment and management of the business,
- Has the opportunity to profit from sound management in the scheduling and performance of engagements and tasks,
- Has control over what he does, how it is done, when and where it is done and whether he does it personally,
- Is free to hire other people, on terms of his own choice, to do the work that he has agreed to be undertaken,
- Can provide the same services to more than one person or business at the same time,
- Provides the materials for the job,
- Provides equipment and machinery necessary for the job, other than the small tools of the trade which in the overall context would not be an indicator of a person in business on their own account.
- Has a fixed place of business where materials, equipment, etc. can be stored,
- Cost and agree a price for the job,
- Provides his own insurance cover e.g. public liability, professional indemnity, etc.,
- Controls his own hours of work in fulfilling the job obligations.
- Is not obliged to take on specific work offered to them.
- Is registered for income tax or VAT.

While the above are characteristics of self-employment, it is important to note that:

- The fact that a person is registered for self-assessment income tax, or registered for VAT, does not automatically mean that person is self-employed.
- A person who is a self-employed contractor in one job, is not necessarily self-employed in the next job. It is possible to be employed and self-employed at the same time in different jobs. For example, a person could be employed on a part-time basis as a shop assistant and spend the rest of the time running their own business from home.
- In the construction sector, for health and safety reasons, all individuals, regardless of employment status, are under the direction of the site foreman/overseer.

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The most likely situation in which a problem might arise is if during a Revenue audit, payments are identified as being made on a regular basis to the same individual with no income tax, PRSI or USC being deducted under the PAYE system.

Contrary to what most people believe, a Revenue PAYE audit will not concentrate on what passes through the payroll system. While the operation of the PAYE system will be examined, most of the attention will be focused on payments which were paid without deduction of income tax, PRSI and USC (i.e. payments which did not pass through the payroll system).

The services of “consultants”, especially where the individual in question was previously an employee of the company, but now works as a self-employed “consultant” either on a full-time or a part-time basis, who receive regular payments, especially where such payments consist of a fixed figure per week, or per month, will always draw attention and the status of the services supplied in such circumstances, are likely to be questioned.

Case Law: Electricity Supply Board v Minister for Social Community and Family Affairs & Ors (2006) (IEHC 59)

This case was appealed to the High Court in 2006 on a point of law against the decision of the Appeals Officer of the Department of Social Community & Family Affairs (DSCFA) in relation to six contract meter readers engaged by the Electricity Supply Board (ESB) under a contract for services (i.e. self-employed) rather than a contract of service (i.e. employees) for the purpose of social welfare contributions.

The ESB engage the services on a contract basis of approximately 300 persons who are engaged in the task of meter reading. This practice has been on-going since 1955. The status for social welfare purposes of the contract meter readers has been the subject of adjudication by Appeal Officers of the DSCFA on six occasions since 1955. All of the decisions confirmed their status as engaged under a contract for services. In August 2000, six contract meter readers referred the matter of their classification for social welfare insurability purposes to the DSCFA. A deciding officer issued a decision confirming that they were engaged under a contract for services and not a contract of service. This decision was appealed and at the appeal hearing the Appeals Officer reversed the decision (i.e. they were engaged under a contract of service and not a contract for services). The ESB subsequently sought a revision of this decision in 2002 which was refused.

In 2006 the ESB sought an order once again to reverse the decision and to seek a declaration that the contract meter readers are insurable under Class S and are engaged under a contract for services. The meter readers' contracts contained the following. In summary, the meter readers:

- Are contracted as independent contractors
- Can use other persons in the provision of services, subject to approval by the ESB and any approved substitute must also carry an ESB ID card
- Shall be responsible for making appropriate income tax and social welfare contributions
- Contract can be terminated subject to 30 days' notice in writing
- Are provided with a handheld terminal for logging the data which is downloaded on a daily basis by the ESB i.e. some element of control exists
- Payment is governed by the number of times he actually reads each meter
- Are responsible for all loss, damage or injury
- Must ensure that any vehicle used has adequate and full insurance cover
- Are obliged to maintain comprehensive public liability insurance cover
- Are required to keep confidential any information obtained in carrying out his duties

- Must carry an ESB ID card which remains the property of the ESB
- Are given instructions as to what date each meter is to be read
- Are not entitled to travel expenses or sick pay
- Are not provided with annual leave but may estimate one bill per consumer, per year but are not paid for this estimated reading
- Carry no financial risk

As full-time meter readers have always been employed under a contract of service, it was held that the meter readers are actually employed under a contract of service and therefore the decision of the Appeal Officer was upheld.

Case Law: Employee v Employer UD512/2011

The claimant submitted a claim for unfair dismissal. The respondent contended that the claimant was not an employee, but was an independent contractor and therefore could not make a claim for unfair dismissal. The Tribunal could not rule on the unfair dismissal claim without first establishing if the claimant was employed under a Contract of Service (employee) or a Contract for Services (self-employed).

Initially the claimant answered an advertisement for an Associate in the Respondent's dental practice. The claimant worked as a dentist from August 2008 until she was dismissed in August 2010.

In making the decision the Tribunal considered existing case law, including The Minister for Agriculture and Food v Barry and Others 1998 ELR 26 (7th July 2008) and Henry Denny and Sons Ireland Ltd v the Minister for Social Welfare.

The Tribunal applied three of the various tests available from precedents.

1. Whether the person provides the necessary premises, or equipment or some other form of investment.
2. Whether the person employs others to assist in the business.
3. Whether the profit which he or she derives from the business is dependent on the efficiency with which it is conducted by him.

In this case, the claimant did not provide premises, equipment or any investment, nor was she involved with the ownership or rental of the building and she did not employ others to assist in the business.

Regarding the possibility of profiting from her own industry or efficiency, the Tribunal concluded that she could not have earned more money by conducting the business more efficiently as her appointments were made in half hour slots and she would have had to employ a dental nurse if she wanted to work at weekends.

The Tribunal was also influenced by some other facts that would not, in isolation, have been sufficient to make a decision. These were as follows:

- The claimant paid tax under Schedule D.
- The claimant had to attend at the surgery during set working hours.
- The lack of any reference in the Associate Agreement authorising the claimant to engage a substitute.

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- *The Respondent exercised a certain amount of control over the claimant (e.g. bookings were made through the reception and fees were paid to reception). The respondent in general dictated which laboratories were to be used and how equipment should be cleaned.*
- *The claimant had to agree the timing of holidays with the respondent and the respondent attended to the claimant's patients when she was on holidays. The Tribunal considered that an end user does not do an independent contractor's work when the independent contractor is on holidays.*
- *The claimant was not usually involved in the recruitment of support staff nor did she have any other responsibility for staff. However, the Tribunal noted that an employee could be involved in such staffing matters.*
- *The claimant was paid directly by the HSE for treatment to medical card holders.*
- *The claimant had no plaque on the door or at the entrance. The Tribunal believed that an independent contractor would insist on a plaque advertising her services.*
- *The respondent collected the fees for private work and paid the claimant 50% of these fees after deductions. This indicated self-employment but is not conclusive as the employee could be working on a profit sharing arrangement.*
- *The patients were the patients of the respondent and she did not 'take them' with her on the termination of her employment.*

The Tribunal concluded that there is no single test to establish the nature of the contract. Each case must be considered in the light of its own particular facts and "whether a worker is an employee or self-employed depends on a large number of factors. The Tribunal wishes to stress that the issue is not determined by adding up the numbers of factors pointing towards employment and comparing that result with the number pointing towards self-employment. It is the matter of the overall effect which is not necessarily the same as the sum total in all individual details. Not all details are of equal weight or importance in any given situation. When the detailed facts have been established the right approach is to stand back and look at the picture as a whole, to see if the overall effect of a person working in a self-employed capacity or a person working as an employee in somebody else's business".

Looking at the working relationship as a whole and mindful of the legal principles set out in previous cases, the Tribunal determined that the working relationship between the Claimant and the Respondent was one of a Contract of Service and that the Claimant was working as an employee for the Respondent. Therefore the Tribunal had jurisdiction to hear the unfair dismissal claim.

7. Intermediary Companies

Services can be provided by an individual to a company other than a direct engagement between the two parties. In many instances, the services are provided through the use of an intermediary company. Some people believe that if they provide services through the medium of a limited company, that they will avoid PAYE, PRSI and USC. This is not necessarily correct. The two main types of intermediaries are as follows.

7.1 Personal Services Companies

Under this arrangement, a contract for services is not explicitly agreed directly between the individual worker and the end-user availing of those services, but is instead agreed between the end-user and an intermediate company owned/directed by the worker. The intermediary used in such circumstances is what is known as a personal service company (PSC). A PSC is a limited

company that typically has a sole director who is the worker/contractor who owns most or all of the shares in the company.

The end-user pays the PSC for the services of the worker, but does not deduct any tax or PRSI from such payments. The PSC pays the worker who, as the owner/director of the PSC, is normally regarded as self-employed for PRSI purposes.

If Pat Kelly forms a company called Pat Kelly Ltd and this company then enters into a contract to provide services to ABC Ltd, Pat Kelly Ltd will invoice ABC Ltd and no PAYE will be operated on the payment from ABC Ltd to Pat Kelly Ltd. When Pat Kelly receives payment from Pat Kelly Ltd, such payments will be subject to PAYE, PRSI and USC. As Pat Kelly owns more than 50% of the shares in Pat Kelly Ltd, PRSI is payable under Class S, hence there is no employer PRSI.

7.2 Managed Service Companies

A variation on the PSC arrangement involves the use of what has become known as a managed service company (MSC). In essence, this involves setting up a company, which is generally structured with a number of worker shareholders who may or may not be involved in delivering similar services to the same end-user. The MSC is typically facilitated by a third party agent who organises the legal and administrative affairs of the company. As the individual workers' shareholdings are below 50%, they can either be found to be self-employed or an employee of the MSC.

7.3 Identifying the Employer in Contracts with Intermediary Companies

In many cases, the owner/director or worker/shareholder involved in either a PSC or an MSC is genuinely self-employed. However, in some cases a contract of service situation could be deemed to exist after analysis of the real terms and conditions of the employment. Also, in some cases of genuine self-employment, a level of dependency can develop between the worker and the end-user over a period of time, so the relationship may gradually evolve into an employer/employee relationship.

Where intermediary companies are used, the employment relationship will be subject to the same tests as outlined above when determining whether the worker is self-employed or an employee. Based on the facts of each case, it is possible that Revenue, the Scope Section or WRC may determine that the end-user is, in fact, the employer. An end-user who is found to be the employer by the Department of Social Protection will be required, for PRSI purposes, to treat the worker as a direct employee and return employer and employee PRSI at Class A. While PRSI is normally collected through the PAYE system, in circumstances where an intermediary arrangement continues in place, this cannot be done and special collection systems will apply.

For example, in the case above of Pat Kelly, Pat Kelly Ltd and ABC Ltd, if ABC Ltd was found to be the employer of Pat Kelly, ABC Ltd would be liable for the employee and employer PRSI due on the payments made to Pat Kelly Ltd.

In the UK, the HMRC introduced special legislation to counteract the use of limited companies to avoid the operation of PAYE and National Insurance Contributions (NICs). The absence of such special legislation in Ireland has led some people to believe that using a limited company as a medium to avoid PAYE, PRSI and USC is safe, but Revenue has previously stated that they do not believe that special legislation is required in Ireland. They are confident that the existing

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legislation is strong enough to challenge any instance of personal services being provided through the medium of a limited company.

In a report published by the Government in January 2018 on the “*tax and social insurance implications of intermediary employment structures and self-employment arrangements*”, it outlines that the available data does not indicate that self-employment is accounting for any significant increased share of the labour market and accordingly the perception of the level of disguised employment may be overstated as the aggregate level of self-employment as a percentage of the overall labour market remains relatively consistent over the past 16 years. However, self-employment is becoming more prevalent in some sectors, especially the ICT sector.

In terms of tax receipts, the report also outlines a potential loss to the Exchequer through the use of intermediary employment structures or self-employment structures. It estimates that where a person is paid a rate equivalent to the average industrial wage (€37,500), the loss to the exchequer is approximately €5,000, which increases to approximately €15,000 at a pay rate of €100,000. The bulk of this loss is attributable to the difference in the PRSI Class A and Class S rates. However, this loss is off-set to some degree by the fact that the self-employed cannot avail of the full range of social insurance benefits, however they may qualify for means tested payments.

To eliminate or reduce the use of inappropriate intermediary employment structures and self-employment arrangements, the report outlines the following recommendations:

- (a) Reduce the difference in PRSI rates between employees (Class A) and self-employed individuals (Class S) to reduce the financial incentive to use self-employed arrangements.
- (b) The DSP should undertake an awareness campaign to promote the services of the Scope Section of the DSP which deals with insurability.
- (c) Explore options to treat self-employed workers who are dependent on a single employer as Class A contributors with the employer PRSI contribution paid by the company which actually uses their services and to assess any payment made to the worker as liable for income tax under Schedule E. These options would not impact on employment law.

If a situation arises where an individual provides services to a company through the medium of a limited company, as set out in the example of Pat Kelly and Pat Kelly Ltd above, it would be prudent for the end-user (ABC Ltd) to ask that person to provide a personal guarantee or indemnity. This means that if the Courts decide that the relationship was one of employer/employee rather than being a principal/contractor, he would be personally responsible for any Income tax, PRSI and USC which would become payable by the end-user.

7.4 Workers in the Digital/Gig Economy

The emergence of new forms of work in the so-called ‘digital/gig/platform/crowd’ economies can pose a challenge in determining whether a ‘contract of service’ or a ‘contract for services’ exists because traditional lines between employers and workers are becoming blurred.

Regardless of how these workers are engaged, they will still be categorised as being either an employee or self-employed. While other countries may have introduced specific rules to deal with this category of workers, Ireland continues to apply the tests outlined above in determining whether a ‘gig worker’ is an employee or is self-employed.

Many workers in the digital economy are genuinely operating in an autonomous, independent, self-employed capacity. Others, however, can be deemed to be engaged as employees in a contract of service situation. Each case must be considered on its own merits.

8. Impact of an Individual's Status

The status of an employee or a self-employed person will affect:

The payments of Income Tax, PRSI and USC:

An employee will have income tax, PRSI and USC deducted from his wages/salary at source by his employer.

A self-employed person must pay preliminary tax and submit income tax returns.

Entitlement to Social Welfare Benefits:

Although the gap between the social welfare benefits an employee is entitled to and the benefits a self-employed person is entitled to has narrowed in recent years, self-employed persons are entitled to a somewhat smaller range of social welfare supports. For example, an employee may be entitled to claim Illness Benefit and statutory redundancy, but a self-employed person is not.

Rights under Employment Legislation:

An employee has rights in relation to working time, holidays, maternity, paternity or parental leave, protection from unfair dismissal, etc., but a self-employed person does not. However, a self-employed person may find they have entitlements under employment law if it is found that the contractual relationship was incorrectly classified as self-employment.

Case Law: An employee v An employer - EAT: TE79/2006 and PW99/2006

An individual was engaged as a 'labour only sub-contractor' under a contract for services (i.e. on a self-employed basis) by the employer. When the individual's work came to an end, he made a number of complaints against the employer to a variety of organisations. These complaints related to issues such as the non-payment of rates of pay as laid down in the registered employment agreement for the construction industry, non-payment of holiday pay, non-provision of a statement of terms of employment or payslips and unfair deductions being made from his wages.

The individual claimed that his correct status was that of an employee, not as a self-employed individual. The Rights Commissioner found that the correct status was that of an employee, as did an officer from the DSCFA. After completing an independent review, the Employment Appeals Tribunal (EAT) also agreed the individual was an employee.

During the period the individual was engaged by the employer, the employer deducted 35% Relevant Contracts Tax (RCT) as is often required when making payments in the construction industry. The individual argued that as his correct status was that of an employee, the 35% RCT deduction was an unlawful deduction under the Payment of Wages Act 1991 and sought to recover the entire amount of RCT deducted from his payments.

The employer's argument was that if the individual should have been taxed as an employee under the PAYE system, as no Tax Credit Certificate was received, the individual ought to have been taxed under the Emergency Basis with the higher rate of tax being applicable, hence the employee had not suffered any loss and the deduction was authorised by law. The employer claimed that the amount of RCT deducted should be offset against the PAYE liability.

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The EAT found in favour of the employer in that it would be unlawful to direct the employer to pay the employee his wages without deduction of tax as this would be in breach of tax legislation. The EAT was satisfied that the deduction was not unlawful, but merely the incorrect classification of a lawful deduction. The EAT found in favour of the employer and no award was made. The EAT however did make an award of €955.13 to the employee under the Payment of Wages Act 1991 in respect of the non-payment of wages claimed by the employee in accordance with the amount specified in the Registered Employment Agreement.

The EAT made no award under the Terms of Employment (Information) Act 1994 to 2001 as the individual could not prove that he had incurred a loss due to not having a statement of his terms of employment. The EAT also agreed that the employee had received his statutory holiday entitlement.

It may appear that the cost to the employer was €955.13, however, the case was also referred to Revenue for further investigation, and there is no information available in respect of this investigation!

Preference in Liquidation:

When a company is in receivership or liquidation, debts to employees are treated as preferential debts under **Section 621** of the **Companies Act 2014** and will be paid before payments due to normal unsecured creditors, which includes monies owed to self-employed contractors.

Public Liability:

Generally, an employee will be covered by their employer's public liability insurance, whereas a self-employed person is expected to hold their own insurance.

9. Common Problems

Some of the most common problems, which arise on a Revenue PAYE audit in relation to whether a person is employed or self-employed, are:

- Former employees who have retired, and then return to work for the employer as a “self-employed” consultant.
- Staff, who work regularly on the employer’s premises and use company equipment, yet are treated as self-employed.
- Individuals (e.g. part-time employees, casual employees, cleaners, security staff, etc.), who are paid without income tax, PRSI and USC being deducted. Many employers pay such staff out of petty cash, thinking that Revenue will never think of questioning this.

It is important to note that even where an individual who has been employed on a self-employed basis, has paid their own tax, it is open to Revenue to raise an assessment on the employer to recover income tax, USC and PRSI (including employer PRSI) which should have been deducted under the PAYE system. The employer is liable for the gross amount payable and strictly speaking, the employee would be entitled to a repayment of the tax already paid over by him. This situation does arise from time to time and in those circumstances, the employer’s only recourse is to seek to recover from the employee, the amount of tax, USC & PRSI, which should have been deducted from him during the course of his employment.

10. Appeals

Appeals against decisions made by either Revenue or a Deciding Officer from the DSP may be made, as appropriate, to either the Tax Appeals Commission or to the DSP Appeals Office. However, any appeal against a ruling regarding the employment status of an individual is usually very argumentative. Special care should be taken in preparing the arguments to be used in such an appeal, as a thorough understanding of the legal principles involved is required, plus a complete knowledge of all of the relevant facts. Very few cases are clear-cut and those that are, are usually clear-cut in establishing that the individual should be treated as an employee.

10.1 Tax Appeals Commission

The Tax Appeals Commission (TAC) is an independent body that hears tax appeals. Tax appeals can be initiated against an assessment, which issues after the tax year to which it refers or against a decision reached by Revenue. Appeals must generally be lodged within 30 days of the date of the decision or issuing of the assessment using a “Notice of Appeal” Form available on the TAC website www.taxappeals.ie

When an appeal has been accepted by the TAC, the taxpayer will be directed to provide a “statement of case” and supporting documentation, which must also be provided to the other party. The parties will be notified in advance of the hearing. In some cases the Commissioner may deem it appropriate to make a decision on an appeal without a hearing, however the taxpayer can insist on having a hearing. Hearings are generally heard in public.

A taxpayer will be notified within 21 days of the outcome of his appeal and the determination of the Commissioner will be reported on their website within 90 days. The determination of an Appeal Commissioner is final, however an appeal can be made to the High Court where either party feels that the Commissioner erred on a point of law.

10.2 The DSP Appeals Office

This is supposedly an independent body, but the officers involved are all employed by the DSP. When a decision is made by a DSP deciding officer as to the employment status of an individual, or as to the PRSI classification of an individual, any person who is dissatisfied with the decision of the deciding officer may appeal that decision to an Appeals Officer. Any appeal must be made in writing within 21 days of the decision of the deciding officer. Appeals can be made by submitting a Social Welfare Appeals Form (SWA01) (which is available at <https://www.gov.ie/en/service/ce66b1-how-to-appeal-a-decision-about-your-social-welfare-claim/>) to swappeals@welfare.ie or by submitting a letter to Social Welfare Appeals Office, D’Olier House, D’Olier Street, Dublin 2.

Upon receipt, the Appeals Office will arrange to have the case placed before the Appeals Officer who will hear the details of the appeal, usually at an oral hearing where both the deciding officer and the appellant may appear to present their case. Following the hearing, the Appeals Officer will issue his decision in writing. The decision of the Appeals Officer may be appealed to the High Court but only on a point of law.

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Introduction to Employment Law

- 1. What is Law?**
 - 2. Legislation**
 - 3. Case Law**
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 - 5. Workplace Relations Commission**
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-

1. What is Law?

Law is usually defined as “a system of legal principles, rules and procedures”.

The two main categories of law are **Civil Law** and **Criminal Law**. The difference between Civil Law and Criminal Law is that Civil Law is usually concerned with protecting the rights and duties of individuals, whereas Criminal Law is concerned with protecting the rights of society in general.

A Civil Law case involves an action taken by a person (or a group of persons) against another person (or a group of persons), in order to seek redress or compensation for some wrong doing.

In Criminal Law, however, the aim of a criminal prosecution is to punish the offender, either by imposing a prison sentence or a fine, or both.

Another very important difference between Civil Law and Criminal Law is that in a Civil Law case, the burden of proof required (the obligation to prove that something in dispute did actually occur) is different to that applied in a Criminal Law prosecution. In Civil Law, a case may be decided on the “balance of probabilities”, whereas, in a Criminal Law prosecution, the burden of proof has to be “beyond reasonable doubt”.

Employment law is generally a type of Civil Law, because it usually involves only the parties directly involved in the dispute – usually an employer and an employee – and one party seeks redress for the other’s behaviour. However, occasionally employment law may involve criminal proceedings (e.g. where an employer breaches health and safety regulations, or employs a young person in breach of the **Protection of Young Persons (Employment) Act 1996**).

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2. Legislation

The two main sources of employment law are **legislation** and **case law**. Legislation is also referred to as ‘written law’, ‘statutes’ and ‘acts’. An Act passed by the Dáil is referred to as primary legislation. However, very often an Act will empower a Government Department or Minister, or a Government Body such as the Labour Court or the Revenue Commissioners, to issue further legislation which deals with the detail of how the primary legislation is to be applied or implemented. Legislation formed in this way is known as Secondary Legislation or Delegated Legislation and is set out in the form of Statutory Instruments. For example, **Statutory Instrument No. 473 of 2001 – Organisation of Working Time (Records)(Prescribed Form and Exemptions) Regulations 2001** outline the records which must be retained by an employer as required by the **Organisation of Working Time Act 1997**.

The main purpose of employment law is to protect employees and to provide them with rights such as written terms of employment and minimum rates of pay, which are guaranteed by law. In addition, legislation requires employees to act reasonably in their relationship with their employer.

Employers and employees cannot contract out of their rights i.e. they must abide by the legislation. For example, an employer cannot refuse to provide a payslip to an employee, even if the employee agrees not to seek a payslip, because this is in breach of the employer’s obligation to issue a payslip under the **Payment of Wages Act 1991**. Legislation sets out the legal minimum rights of the parties which can be varied upwards by agreement, but never downwards. For example, an employer may give an employee more than the statutory minimum of 4 working weeks paid annual holidays but may never give an employee less than this amount.

Employment legislation only applies to employees. Self-employed people have no protection under employment law and must make their own arrangements for issues such as holidays and working hours.

3. Case Law

The second major source of employment law is case law, i.e. cases, which have been decided by the courts. This occurs where a dispute arises as to what the written legislation actually means. In such cases, the argument is not about what the law says because that is clear for everyone to read, but rather what precisely the law means. Where there are different interpretations as to what the law means, an employer and an employee will argue their case in court. The judge will then give a decision as to the meaning of the relevant legislation and this ruling is then binding on everyone, unless and until that ruling is later overturned by a higher court. A ruling by a court, as to the meaning of a particular piece of legislation (referred to as “a point of law”) can only be overturned by a higher court. Thus, a decision of the Labour Court or the Circuit Court can only be overturned by a decision of the High Court, Court of Appeal or Supreme Court and a ruling by the High Court can only be overturned by a decision of the Court of Appeal or Supreme Court, etc.

Most employment law in Ireland is derived from European Union (EU) Directives, which compel the Irish Government to enact legislation which complies with the Directives. If an employer, or an employee, feels that the Irish legislation does not comply with, or conflicts with, the relevant EU Directive, upon which the Irish legislation is based, then he can appeal a decision of an Irish Court to the Court of Justice of the European Union (CJEU), on the basis that the Irish Law is not in compliance with the relevant European Directive.

However, most employment law cases do not go directly to court but are heard by specialist employment law bodies such as the Workplace Relations Commission (WRC) and the Labour Court. The advantages of such bodies are that they specialise in dealing with employment law cases, they are cheaper and quicker to access than the normal courts and they are less intimidating for the parties involved.

4. Workplace Relations

The **Workplace Relations Act 2015** was enacted in May 2015 and commenced on 1st October 2015. The Act reformed the State's employment rights and industrial relations structures to deliver a better service for employees and employers.

Previously there were 5 separate bodies (National Employment Rights Authority, Labour Relations Commission, Employment Appeals Tribunal, Equality Tribunal, and Labour Court) which dealt with complaints and disputes relating to industrial relations, employment law and employment equality.

Under the new system there are now 2 statutory bodies, namely the Workplace Relations Commission (WRC) and Labour Court.

5. Workplace Relations Commission

The WRC provides information on employment law, equality and industrial relations to employees, employers and to representative bodies of employees and employers which is available on their website <https://www.workplacelations.ie/>. A telephone information service is also provided (Lo-call 0818 80 80 90 or Tel: 059 9178 990) which is operated by experienced Information Officers.

The WRC provide advisory and conciliation services. On request, the Advisory Service engages with employers, employees and their representatives to help them to develop effective industrial relations practices, procedures and structures. Such assistance could include reviewing or developing effective workplace procedures in areas such as grievance, discipline, communications and consultation.

Conciliation is a voluntary process in which the parties to a dispute agree to avail of a neutral and impartial third party to assist them in resolving their industrial relations differences. The WRC will provide an Industrial Relations Officer to chair negotiations with the view of steering the discussions and exploring possible solutions in a non-prejudicial fashion. Solutions are reached only by consensus, hence the outcome is voluntary.

WRC Inspectors visit workplaces and carry out inspections of employer's records to ensure compliance with employment and equality legislation. An inspection may arise as a result of a complaint being received of alleged non-compliance, a campaign focussing on a specific sector or a particular piece of legislation, or it may simply be a routine inspection.

Inspectors are permitted to enter places of employment, inspect records (and take copies if necessary) and request information. Maintaining the correct records and making them available to an Inspector helps to quickly establish if the employer is compliant. If areas of non-compliance are identified the Inspector will work with the employer to resolve them. The Inspector will aim to make the inspection process as simple as possible and take up the minimum of an employer's time. Where breaches of legislation have been found, the Inspector may, depending on the legislation involved, issue either a Compliance Notice or a Fixed Payment Notice to the employer.

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5.1 Compliance Notices

An inspector can issue a Compliance Notice to an employer for breaches of certain Acts.¹ The offences which may give rise to a Compliance Notice being issued are outlined separately in each chapter where applicable. The Compliance Notice will:

- Contain the reason why the Inspector believes a breach has occurred,
- Outline the corrective action to be taken by the employer,
- Specify the date by which the employer must comply with the Compliance Notice. (**Note:** This date cannot be within 42 days following the issue of the Compliance Notice, as the employer can bring an appeal against the notice within 42 days of its issue).
- Outline the employer's right to bring an appeal against the Compliance Notice.

Where the Inspector is satisfied that the employer has complied with the Compliance Notice by the specified date, he will issue a written notification to the employer.

If the employer does not agree with the Compliance Notice, he can appeal it to the Labour Court within 42 days of it being issued. On appeal, both the employer and Inspector are entitled to be heard by the Labour Court and the Labour Court can either:

- a) Affirm the Compliance Notice,
- b) Withdraw the Compliance Notice, or
- c) Withdraw the Compliance Notice and issue other directions to the employer.

Case Law: Boots Retail (Ireland) Limited and Workplace Relations Commission (CNN194)

This case involves the appeal of a Compliance Notice by the employer. An inspector of the WRC issued a Compliance Notice to the employer for a breach of section 12 of the Organisation of Working Time Act 1997 by allowing employees to work more than 6 hours without receiving a 30-minute rest break, and for an alleged breach of a Statutory Instrument which states that retail workers who work more than 6 hours and work between 11.30am to 2.30pm are entitled to a break of 1 hour between those hours.

*The Labour Court allowed the appeal on the grounds that a Compliance Notice can only be issued for breaches of an Act. A list of the Acts covered, and the relevant sections are clearly stated in the **Workplace Relation Act 2015**. A Statutory Instrument is secondary legislation, and not an Act, and it is not specified as one of the offences for which a Compliance Notice can be issued. The Labour Court has the power to affirm or withdraw a Compliance Notice but does not have the power to amend or re-write a Compliance Notice. As the Labour Court found the Compliance Notice was defective, it directed that it be withdrawn.*

Where the Labour Court affirms the Compliance Notice, the employer has 14 days to comply with it. If the employer is not happy with the decision of the Labour Court he has a further right of appeal to the Circuit Court, which can either confirm or withdraw the Compliance Notice or issue other instructions. Again, the employer has 14 days to comply with this decision.

Where the employer does not comply with the Compliance Notice, or the decision of the Labour Court or Circuit Court, within the specified timeframe, he is guilty of an offence which:

¹ Workplace Relations Act 2015, Section 28

- (a) On summary conviction, could result in a Class A fine of up to €5,000 or imprisonment for a term not exceeding 6 months, or both,
- (b) On conviction on indictment, could result in a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years or both.²

41 Compliance Notices were issued to employers in 2020 for breaches of employment legislation. No Compliance Notices were appealed to the Labour Court in 2020.

The issuing of a Compliance Notice to an employer does not prevent an employee from taking a case against the employer for breaches of the Act, nor does it prevent an employer from being prosecuted for breaches of the Acts.

5.2 Fixed Payment Notices

Inspectors can also issue Fixed Payment Notices or “on the spot fines” for employers for breaches of certain Acts.³ The offences which may give rise to a Fixed Payment Notice being issued are outlined separately in each chapter where applicable.

A Fixed Payment Notice can be any amount as set out by legislation, but it cannot exceed €2,000. If the employer accepts the notice and pays the amount stated within 42 days no prosecution will take place for the breach of the Act.

An employer does not have to accept the Fixed Payment Notice and can refuse to pay it. After 42 days the employer will then face prosecution for breach of the Act in the District Court which could result in a higher penalty. Equally, the employer will have an opportunity to defend his case in the District Court.

3 Fixed Payment Notices were issued to employers during 2021.

6. Labour Court

The Labour Court was established under the **Industrial Relations Act 1946**. One of its key roles is to assist in the adjudication and resolution of industrial disputes. Since the introduction of the **Workplace Relations Act 2015**, the Labour Court now has the sole appellate jurisdiction in all disputes under employment legislation (i.e. any appeal of an Adjudication Officer’s decision must be made to the Labour Court). The Labour Court’s determinations under employment legislation are legally binding.

The Labour Court can refer a question of law to the High Court for a determination. Decisions of the Labour Court can be appealed by either party to the High Court on a point of law only. The Labour Court also provides other services such as registering employment agreements and the establishment of Sectoral Employment Orders.

Further information is available on their website at <https://www.labourcourt.ie/en/>.

6.1 Registered Employment Agreements (REA)

An employer and a trade union can come to an agreement between themselves in relation to pay and working conditions. Any party (employer or trade union) to an employment agreement may apply to the Labour Court to have the agreement registered. Subject to certain conditions being

² Workplace Relations Act 2015, Section 7

³ Workplace Relations Act 2015, Section 36

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satisfied, the Labour Court will register an employment agreement. The REA is binding only on the parties to the agreement. Once registered, the Labour Court will maintain a register of agreements and publish the details of the registration, variation or cancellation of the REA on its website.

6.2 Sectoral Employment Orders (SEO)

A trade union of workers or organisation of employers which, the Labour Court is satisfied is substantially representative of workers or employers of a particular class, type or group of workers in a particular economic sector, may request the Labour Court to examine the terms and conditions relating to the remuneration, sick pay or pension of workers of that particular sector and request the Labour Court to make a recommendation to the Minister for Enterprise, Trade and Employment on the matter.

The Minister has 6 weeks to accept the recommendation and confirm the terms of the recommendation subject to certain conditions being met.

An SEO shall apply to all employees in the relevant sector, irrespective of whether the employee and his employer were involved in negotiating the agreement, and the terms of the SEO will form part of an employee's contract of employment. An SEO is also referred to as an Employment Regulation Order (ERO).

7. Complaints Procedure

All complaints about breaches of employment and equality law must be presented first to the WRC. An employee or specified person (e.g. solicitor or trade union representative) may make a complaint.⁴

Complaints must be made within 6 months of the alleged contravention of the Act. This time limit may be extended to 12 months if the WRC is satisfied that the reason for the delay was due to reasonable cause. With regard to offences under the **Adoptive leave Acts 1995 and 2005**, the **Maternity Protection Acts 1994 to 2022**, the **Paternity Leave and Benefit Act 2016** and the **National Minimum Wage Acts 2000 and 2015**, more specific detail regarding the date of the alleged contravention is outlined in the chapters dealing with these Acts.

Case Law: An Employee v An Employer (R054555/WT)

The employee was employed by a recruitment agency to work for a third party from October 2005 until February 2006. His employment with the agency terminated when he got a full-time position from the third party. His complaint was that he was owed 13.8 hours holiday pay from the employment agency. As the complaint was received in July 2007, it was out of time and therefore failed as this was after the expiration of the period of six months of the date of the contravention.

Case Law: Unique Diary Productions Ltd v Homan (PWD1826)

This case concerns an appeal by an employer against a decision by an Adjudication Officer who had directed the employer to pay the employee €2,496.29 in compensation under the Payment of Wages Act 1991 for an underpayment of salary from January to December 2016. The employee lodged his complaint on 11th May 2017 and as complaints must be made within 6 months of the alleged contravention, the relevant 6 month reference period commenced on 12th November 2016. While the employee requested that the time limit be extended to 12 months, the application was refused on the grounds that there was no reasonable cause for the delay. As no underpayment

⁴ Workplace Relations Act 2015, Section 41

occurred during the period from 12th November 2016 to 31 December 2016, the Labour Court determined that the employer's appeal was successful, and the decision of the Adjudication Officer was set aside.

Complaints should be made using the e-Complaint Form available at:
https://www.workplacerelations.ie/en/e-complaint_form/

On receipt of the complaint, the WRC will acknowledge receipt. Where the WRC is of the opinion that the complaint is capable of being resolved by mediation (i.e. without formal adjudication), it may be referred to a Mediation Officer (subject to the agreement of both parties involved in the dispute). Otherwise it will be referred for formal adjudication by an Adjudication Officer and details of the complaint will be forwarded to the employer. Complaints which fall to be investigated by means of inspection and associated enquiries will be referred to the Commission's Inspection Services.

7.1 Mediation Service

The **Workplace Relations Act 2015** introduced a mediation service⁵ which affords both parties the opportunity to resolve any complaints without being referred for formal adjudication by an Adjudication Officer. Mediation will only be offered where both parties consent - otherwise the complaint or dispute will be referred to an Adjudication Officer. **Note:** the Complaint Form asks the complainant to indicate if he would be willing to avail of mediation services to facilitate the resolution of the complaint should the WRC be in a position to offer these services in their case.

Where the mediation service is availed of, a Mediation Officer will be appointed and a meeting will be arranged between the Mediation Officer and both parties. The meeting will be held in private and all information will remain confidential. As the mediation process is voluntary, it can be terminated at any stage. If both parties resolve the dispute then the Mediation Officer will draw up an agreement which will be signed by the employer and employee. Once the agreement has been signed it becomes binding on both parties. Where the complaint is not resolved, it will be referred for adjudication by an Adjudication Officer.

7.2 Adjudication Service

Where a case is referred for adjudication, a hearing will be arranged where both parties will have an opportunity to be heard and present any evidence relevant to the complaint.

Following a Supreme Court judgement on 15th April 2021:

- Hearings are held in public unless the Adjudication Officer determines that it should be held in private due to the existence of special circumstances. Special circumstances may relate to sensitive issues such as sexual harassment, protected disclosures, or cases involving minors and individuals with a disability or medical condition.
- Published decisions will include the names of the parties unless the Adjudication Officer determines that the names should not be published. A fully or partially anonymised version of the decision may be published if special circumstances apply.

These changes were legislated for in the **Workplace Relations (Miscellaneous Provisions) Act 2021** which came into effect on 29th July 2021.

⁵ Workplace Relations Act 2015, Section 39

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The employee and employer are entitled to be accompanied at the hearing by a trade union representative, solicitor or barrister or by any other person permitted by the Adjudication Officer. If the complainant is under 18 years he is entitled to be accompanied at the hearing and be represented by his parent or guardian. In certain instances, a case may be dealt with in written correspondence without a hearing.

The Adjudication Officer can require any person to attend a hearing by giving notice in writing and to produce any documents in his possession relating to the proceedings. A person who fails to attend the hearing, fails to give evidence or who fails to produce documentation as requested shall be guilty of an offence and liable on summary conviction to a Class E fine not exceeding €500.

An Adjudication Officer can require a person giving evidence in a case to give that evidence under oath. A person who gives a false statement under oath, which is material to the proceedings, shall be guilty of an offence and liable on summary conviction to a Class B fine not exceeding €4,000 or to 12 months imprisonment, or both.

Once the case has been heard, the Adjudication Officer will make a decision and both parties will be given a written copy. An Adjudication Officer will not attempt to mediate or conciliate a case. A copy of the decision shall be published online.

As an exception to the rules above regarding cases being heard in public, hearings under section 13 of the **Industrial Relations Act 1969**, will continue to be conducted in private. Section 13 of the **Industrial Relations Act 1969** deals with trade disputes (a dispute between an employer and an employee(s) relating to the employment or non-employment, or the terms or conditions of the employment, of any person - other than pay rates, working hours or annual holidays).

An employer is required to carry out a determination of an Adjudication Officer within 56 days (8 weeks) unless the determination is under appeal to the Labour Court. Where an employer fails to carry out the decision of the Adjudication Officer within 56 days, the employee, the WRC or the employee's trade union or representative body may apply to the District Court for an order directing the employer to do so.

An Adjudication Officer can dismiss a complaint if he feels that the claim is frivolous or vexatious. If a complaint is dismissed, this decision can be appealed to the Labour Court within 42 days.

8. Appeals Process

Appeals of Adjudication Officers' decisions must be made to the Labour Court within 42 days from the date of the decision, using the Labour Court Appeal Form available at: <https://www.labourcourt.ie/en/forms/>

Once an appeal has been received, the Labour Court will advise the other party that an appeal has been made and a date for a hearing will be arranged. The parties are required to submit 6 copies of their submissions stating their position in relation to the case no later than 7 working days prior to the date of the hearing. Labour Court hearings are generally conducted in public, although there are some exceptions where they are heard in private. After the hearing, the Labour Court will issue its written determination to both parties. Determinations of the Labour Court are also published on the WRC website.

In a case involving the appeal of the decision of an Adjudication Officer, the Court's decision may uphold the original decision of the Adjudication Officer, vary it, or overturn it.

A decision of the Labour Court may be appealed to the High Court on a point of law (as opposed to facts). This means that an appeal to the High Court can only be made on the basis that the decision of the Labour Court is incorrect in law. The Labour Court can also refer a question of law to the High Court for determination and decisions of the High Court are final.

An employer is required to carry out a determination of the Labour Court within 6 weeks (42 days) unless the determination is under appeal to the High Court.

9. Failure to Pay Compensation

Where an employer fails to carry out the determination of an Adjudication Officer or the Labour Court within the appropriate timeframes, the employee may apply to the District Court in the jurisdiction where the employer resides, for an order seeking enforcement of the determination. In cases where an employer has been ordered to reinstate or reengage an employee, the District Court may order the employer to pay compensation which is just and equitable but not exceeding 2 years pay, instead of reinstatement or reengagement.

An employer who fails to pay compensation awarded by the WRC or the Labour Court may be liable on summary conviction to a Class A fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months, or both.⁶

In proceedings it shall be a defence for the employer to prove that the reason for non-payment of the compensation was due to his financial circumstances.

10. Fines Act 2010

The **Fines Act 2010** introduced a general legislative scheme to update the value of most existing fines in Irish Law to ensure that the values of fines in existing and future legislation are kept up to date. As a consequence, fines applicable under employment legislation have been revised and are updated in this text where applicable.

The **Fines Act 2010** created 5 new classes of fines for summary offences and assigned a financial value to each. A summary offence is one which is heard in the District Court by a judge, without a jury. The maximum prison sentence that can be imposed for a summary offence is 12 months. The classes and values of fines are:

Fine Class	A	B	C	D	E
Maximum Fine	€5,000	€4,000	€2,500	€1,000	€500

⁶ Workplace Relations Act 2015, Section 51

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Terms of Employment (Information) Acts 1994 to 2014

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-

1. Main Provisions

The **Terms of Employment (Information) Acts 1994 to 2014** provide that:

- An employer must give an employee a written statement containing the core terms of his employment within 5 days of commencement of employment,¹
- An employer must give an employee a full written statement of his terms of employment within 1 month of starting work,² and
- The employer must notify the employee of any changes in the particulars of the statement no later than the day the change takes effect.³

¹ Section 3(1A) as amended by the European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

² Section 3 as amended by the European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

³ Section 5 as amended by the European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

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The main purpose of this legislation is to clarify at the outset what the terms of employment are, in order to avoid problems which may arise at a later date. This Act is effective since 16th May 1994 and was substantially revised by the **European Union (Transparent and Predictable Working Conditions) Regulations 2022** which came into effect on 16th December 2022.

2. Covered Employees

The Acts define an employee as follows.⁴

Employee - means a person who has entered into, or works under, a contract of employment for an employer.

Contract of Employment – means:

- A contract of service or apprenticeship,
- Any contract whereby:
 - an individual agrees with another person to personally carry out any work or service for that person, or
 - an individual is engaged by an employment agency within the meaning of the **Employment Agency Act 1971** to do any work or service for a third party.

Employer - means a person with whom the employee has entered into a contract, or for whom the employee works under a contract of employment and is liable under the contract of employment to pay the wages of the employee in respect of the work or service carried out. In the case of a person engaged by an employment agency to perform work for a third party, or any other contract whereby an individual agrees with another person to personally carry out any work or service for that person, the person who is liable to pay the wages of the employee is deemed to be the individual's employer for the purposes of this Act.

The Act does not apply to a person who has been in continuous service of the employer for less than 4 consecutive weeks, except for the requirement for an employer to issue a written statement of core terms of employment within 5 days of commencement of employment, which applies to all employees on commencement of employment.⁵

Continuous service is calculated in accordance with the **Minimum Notice and Terms of Employment Act 1973**. An employee's service is regarded as continuous unless he is dismissed or voluntarily leaves his job. Where an employee ceases to be employed by an employer and subsequently recommences employment with that employer within 26 weeks, the employee's continuous service is based on the aggregate of both periods of employment.

Continuous service is not broken by the dismissal of an employee and the immediate re-employment of the employee, for example the reinstatement or reengagement of an employee under the **Unfair Dismissals Acts 1977 to 2015**. The transfer of a business is not regarded as a break in continuous service.

2.1 Calculating the Period of Continuous Service

The following periods **are included** when calculating the period of continuous service:

- Absence on maternity, paternity, parent's, adoptive, carer's, parental or force majeure leave.

⁴ Section 1(1)

⁵ Section 2(1)

- An absence of up to 26 weeks due to lay-off, sickness or injury, or by agreement with the employer.
- If in any week, or part of a week, an employee was absent due to a lock-out, that week counts as a period of service.
- If in any week, or part of a week, an employee was absent due to a strike or lock-out in any business other than that in which he is employed, that week counts as a period of service.
- An absence by an employee arising due to service in the Reserve Defence Forces.

However, the following periods are **excluded** when calculating the period of continuous service:

- Any week in which an employee is not normally expected to work at least 3 hours or more,
- An absence due to an employee taking part in a strike relating to the business in which the employee is employed.

When calculating the period of continuous service of an employee, any week in which an employee is not normally expected to work for at least 3 hours is not included. Time worked by an employee with all employers within the same group counts towards the 3 hour period. However the 3 hour requirement does not apply to any employment where there is no guaranteed amount of paid work agreed before the employment commences.

In practice, this means that the vast majority of employees, whether they are permanent, full-time, part-time, fixed-term, casual, employed by the State, employed by an agency, etc. are covered under this Act.

3. Terms of Employment

The core terms are seen as being more important which is why they must be issued within 5 days of commencement, especially for those in low paid or casual employment, as opposed to the remainder of the terms which must be issued within 1 month of commencement.

The purpose of the written statement is to clarify the terms of a person's employment and to avoid uncertainty or misunderstandings, which can often lead to disputes at a later date (e.g. rates of pay for overtime hours not specified in advance and a dispute later arising between employer and employee), because the employee's expectations were not the same as the employer's intentions. It helps protect the employer's interests while ensuring that employees are treated fairly.

The written statement of terms of employment may be included in the employee's written contract of employment, or the contract may refer to information contained in the staff handbook which contains details of the terms, provided that the handbook is reasonably accessible to the employee.

Where an employee commenced employment prior to the commencement of the Act on 16th May 1994, the employer must provide a written statement to an employee within 2 months of being requested to do so by the employee.

Where an employee commenced employment prior to the commencement of the **European Union (Transparent and Predictable Working Conditions) Regulations 2022** on 16th December 2022, the employer must provide a revised written statement to include all the changes introduced by these Regulations if so requested by the employee. The Act does not specify any time period in which the employer is required to comply with such a request. Regardless of whether the employee makes a request or not, the employee is protected by the new provisions introduced by the Regulations as outlined below.

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4. Written Statement of Terms of Employment

To avoid issuing two versions of a written statement of terms of employment (i.e. one version with the core terms and a second version with the remaining terms), it would be prudent for an employer to issue one version containing all terms within 5 days of commencement, or indeed before the employment commences, so the employee is fully aware of the terms prior to commencement.

The following is an outline of all statutory terms of employment which an employer is required to provide to an employee, including some additional commentary. While the format outlined below follows the statutory format, it is possible that employers may blend some of the required information under a single heading. For example, it may be possible for an employer to blend all the required information on working hours and rest breaks under a single heading.

At a minimum, employers should ensure that the following items are included in an employee's core terms / written statement of terms of employment and provided to an employee within the required timeframes.

SAMPLE WRITTEN STATEMENT OF TERMS OF EMPLOYMENT

Note: The headings in Section A are the core terms which must be provided to an employee in a written statement within 5 days of commencement.

Section A

i) Name of Employer and Name of Employee

This statement applies to: (Name of employee)

Employers must state their full and correct name. In the case of a limited company, the name of the company as registered with the Companies Registration Office should be given. If an employee wants to take legal action against his employer he needs to know the legal name of his employer and that often is not as clear as it might appear. For example, if an employee works for a company which is a member of a group of companies, such as Bank of Ireland Group or Dunnes Stores Group, he needs to know what specific company in the group is his employer.

ii) Address of Employer

A number of options are available to the employer under this heading. The intention is to ensure that the employee is given the full and accurate address of the employer. The options are as follows:

- The address of the employer in the State, or
- The address of the principal place of the relevant business in the State. This could be appropriate in the case of a business, which has a number of locations, or
- The address of the registered office (i.e. address of the company as registered with the Companies Registration Office). The registered office can be anywhere in the State.

iii) Type of Contract

- If it is a temporary contract, the expected duration of that temporary contract should be stated.
- If it is a fixed term contract, the date when that contract expires should be stated.

iv) Rate of Remuneration and Pay Reference Period

The rate of remuneration or method of calculation must be included. In addition to basic pay, this heading covers any other aspects of remuneration such as overtime premiums, unsocial hours or Sunday premiums, bonus, commission, productivity incentives, etc. If the employer does not give details of the rate of remuneration, he must give details of the method of calculating the remuneration. All separate pay elements must be indicated separately.

The employee's pay frequency (e.g. weekly, fortnightly, monthly, etc.) and method of payment (e.g. credit transfer to a nominated bank account, cheque, cash, etc.) must also be included under this heading. For example, employees will be paid each Friday by credit transfer to a nominated bank account.

When a person is paid an annual salary, it would be advisable to include the method of calculating the daily rate of pay. Is the annual salary divided by 260 (52 weeks by 5 days per week), 261 (number of working days in a normal year), or is the salary divided by 12 to get a monthly payment and then divided by the number of days or number of working days in the month)?

The **National Minimum Wage Acts 2000 and 2015** state that every employer must select a pay reference period for each employee. The pay reference period may be a week, a fortnight, or more, but no longer than a month. The pay reference period is used to calculate the employee's average hourly rate of pay. This is done by dividing the gross reckonable pay earned by an employee in a pay reference period (a week, a fortnight or a month), by the number of the employee's working hours in that pay reference period. The resulting figure is the employee's average hourly rate of pay.

v) Normal Working Hours

Employers must outline the number of hours which the employer reasonably expects the employee to work in a normal working day and a normal working week.

vi) Employer's Policy on Tips and Gratuities⁶

Employers in certain industries specified in Regulations (e.g. hospitality sector) must outline their policy governing the distribution of tips or gratuities and mandatory charges between employees. For example, this policy could be based on the number of working hours worked by each employee during the period the tip was received, the seniority or experience of the employee, the value of sales, income or turnover generated by the employee, etc.

A tip or gratuity is a payment that is made voluntarily by the customer, in circumstances where a reasonable person would likely infer that the customer intended or assumed it would be retained by, or distributed to, the employee or a group of employees.

A mandatory charge is a contractually imposed and receipted payment that a customer is required to pay in order to receive goods or services provided by, or on behalf of, an employer and is payable in addition to the cost of the goods or services. An example of a mandatory charge would be a service charge that might be charged to a customer in a restaurant.

This is covered in more detail in the chapter entitled **Payment of Wages Act 1991**.

⁶ Section 3(1A) inserted by Payment of Wages (Amendment)(Tips and Gratuities) Act 2022

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vii) Place of Work⁷

Employers must state the place of work of the employee. If there is no fixed or main place of work, the employer must state that the employee will be required to work in various locations or that the employee is free to determine his place of work.

Where an employee is free to determine his own place of work (e.g. where an employer permits remote or home working), employers may wish to restrict this so that the work must be carried out within the State, as the tax and social insurance rules can be complex where an employee physically carries out his duties in another country.

viii) Job Title, Grade or Nature of Work⁸

Employers must state the job title, grade or nature of the work (e.g. general operative, IT consultant, payroll manager, payroll administrator – junior position, clerical officer (grade III), builder, painter, etc.).

Alternatively an employer can provide a brief description of the work which the employee will be required to do (e.g. you will be required to process the employer's weekly and monthly payrolls in a timely and accurate manner).

It might be best practice for the employer to outline both the job title and a brief description of the duties.

ix) Date of Commencement of Employment⁸

The employer must state the employee's date of commencement.

x) Terms and Conditions relating to Hours of Work⁸

This should include arrangements in relation to overtime hours, Saturday or Sunday work, evening work, shift rotas or other such arrangements, as appropriate. This should include details of any premium rates payable or time off in lieu which may be granted in respect of such work.

The statement should make clear the rules relating to overtime. Is it calculated on a daily or weekly basis? For example, is it paid after 8 hours a day or 40 hours a week and how does an absence from work affect this? Will the employee get a premium rate of pay such as time and a half or double time?

Or will they be granted time off in lieu in respect of overtime worked, and if so, how will this be calculated? For example, where overtime is paid at a premium rate of time and a half, the employee might expect to get time off in lieu of 1½ times the hours he worked, whereas an employer might just want to give time off on an hour for hour basis (time off equal to the number of hours of overtime worked).

Unless the written statement makes it clear what happens in this situation, this could lead to problems.

*See the **Organisation of Working Time Act 1997 – Rest and Working Time** chapter for information on the **Code of Practice on the Right to Disconnect**.*

⁷ Section 3(1A) inserted by European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

⁸ Section 3(1A) inserted by European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

xi) Probationary Period

Where a probationary period applies to the employment, its duration and conditions must be clearly outlined. See below for further information on probationary periods

Section B

The additional information below must be provided to the employee in writing within 1 month of commencing employment.

xii) Rest Breaks and Rest Periods⁹

Employers must state the times and durations of an employee's daily and weekly rest breaks or periods which are being allowed to the employee and of any terms and conditions relating to these periods and breaks, which must be no less favourable than those outlined in the **Organisation of Working Time Act 1997**.

For example, where an employee's working hours are 9am to 5.30pm, the employer might grant an employee a 1 hour lunch break which is to be taken between 1pm and 2pm. This lunch break is unpaid. The employee can avail of his daily rest period of 11 hours between 5.30pm and 9am the following morning. The employee can avail of his weekly rest period between close of business on a Friday until 9am on Monday morning.

xiii) Right to Request a Statement of Hourly Rate of Pay¹⁰

An employer must include a term which informs the employee of his right to request a written statement of his average hourly rate of pay for any pay reference period in the previous 12 months.

xiv) Paid Leave (other than sick leave)

Employers must give details of any terms or conditions relating to paid leave. This should include any paid leave schemes that the employer operates, for example holidays, maternity leave, paternity leave, special leave, etc. and any arrangements that apply to such leave.

xv) Incapacity for Work/Sick Pay

Employers must state any terms and conditions that apply to an employee relating to incapacity for work or sickness/injury and paid sick leave (e.g. terms and conditions of sick pay schemes, reporting of absences, production of medical certificates, rules relating to payment, etc.).

The **Sick Leave Act 2022** commenced on 1st January 2023 and provides employees, who have 13 weeks continuous service, with a statutory entitlement to 3 days paid sick leave per year, subject to the employee providing his employer with a medical certificate. Those employers who previously did not pay sick pay are now required to pay statutory sick pay to qualifying employees which is calculated as 70% of the employee's daily rate of pay subject to a maximum of €110.

The **Sick Leave Act 2022** does not apply to any employer who provides a sick pay scheme, where the benefits as a whole, are more favourable to the employee than statutory sick pay. At the time of printing, a certain amount of uncertainty remains in relation to this point.

xvi) Pension and Pension Schemes

Employers must state the terms and conditions of any pension schemes and any arrangements relevant to pensions.

⁹ Terms of Employment (Additional Information) Order 1998 (S.I. No. 49/1998)

¹⁰ National Minimum Wage Act 2000, Section 45

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xvii) Training Entitlement¹¹

Employers must state the training, if any, to be provided by the employer. See below for further obligations on employers in relation to mandatory training.

xviii) Social Security Institution¹²

Employers must state the identity of the social security institution to which the social security contributions are payable in respect of that employment, and where applicable, the employer should also outline any protection relating to social security provided by the employer. For example, in Ireland Pay Related Social Insurance Contributions (PRSI) are payable to the Department of Social Protection. This provision does not apply to seafarers or sea fishermen.

xix) Unpredictable Work¹²

If the work pattern of the employee is entirely or mostly unpredictable, the employer must state that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours, the reference hours and days within which the employee may be required to work, and the minimum notice period the employee is entitled to before the start of a work assignment. This provision does not apply to seafarers or sea fishermen.

At a minimum, this notice period must comply with the provisions of the **Organisation of Working Time Act 1997**, which provides that where neither an employee's contract of employment or collective agreement specify the employee's normal starting or finishing times of work, an employer must give an employee at least 24 hours advance notice of the day(s) which the employer requires the employee to work, to include the start and finish times for each day(s).

xx) Temporary Contract End Users¹²

In the case of a temporary contract of employment, where applicable, the identity of the end user undertaking must be stated. For example, where an employee is engaged by an employment agency on a temporary contract to carry out work for a third party (hirer or end user), the identity of the third party must be included in the employee's terms of employment.

xi) Period of Notice to be given before Terminating Employment

Employers must give details of the period of notice to be given by the employer and by the employee prior to the termination of the contract of employment. If it is not possible to indicate the period of notice when the written statement is given to an employee, the statement should clearly indicate the method for determining the period of notice.

Notice periods allow both the employer and the employee to plan for the cessation of the employment. For employers, it allows time to recruit a new employee and minimise any disruption when an employee leaves. For employees, it affords the employee time to seek new employment opportunities.

a) Notice requirement from Employer to Employee

Many employers simply refer to the terms contained in the **Minimum Notice and Terms of Employment Act 1973 to 2005** which specifies the minimum notice which an employer must

¹¹ Section 3(1) inserted by European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

¹² Section 3(1) inserted by European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

give to an employee on termination of his employment which increases as the employee's service increases as follows:

Length of Service	Minimum Notice
13 weeks but less than 2 years	1 week
2 years but less than 5 years	2 weeks
5 years but less than 10 years	4 weeks
10 years but less than 15 years	6 weeks
15 years or more	8 weeks

This allows an employer to operate a shorter notice period during an employee's probationary period (e.g. an employee with less than 13 weeks continuous service can be dismissed without any notice unless his contract provides for a longer notice period). Generally, an employee is required to have 1 year's continuous service to bring a claim for unfair dismissal, except where dismissal arises due to certain circumstances, such as, pregnancy, trade union membership, an employee exercising certain statutory rights or where they have been discriminated against on any of the 9 grounds of discrimination in which case there is no minimum service requirement. Probationary periods count as periods of service.

Where an employer provides for a longer notice period in a contract of employment, the employer will be required to honour the longer duration. While employers regularly provide for longer notice periods, many stipulate that employees will be subject to the statutory notice period during any probationary period, with the longer notice period applying once an employee has successfully completed their probationary period. Probationary periods are discussed in more detail below.

While not a statutory requirement, many employers include a clause in the contract of employment which permits the employer to make a payment in lieu of notice (PILON) to an employee. This enables an employer to terminate a contract of employment and make a payment in lieu of the notice period without this amounting to a breach of contract, and also eliminates the requirement for an employee to work during his notice period.

b) Notice requirement from Employee to Employer

Under the **Minimum Notice and Terms of Employment Act 1973 to 2005**, where an employee decides to leave his employment (i.e. resign), he is:

- Not required to give his employer any notice if he has less than 13 weeks continuous service
- Required to give his employer 1 week's notice where he has attained 13 weeks' continuous service (e.g. an employee with 20 years' service is only required to give his employer 1 week's notice in accordance with the Act).

In cases where there is a dispute as to the entitlement of the employer to a minimum period of notice, an Adjudication Officer may issue such directions as he considers appropriate.

Hence an employer may want to include a longer period in the employee's written statement of terms of employment to allow more time to plan for the employee's departure.

Where an employee leaves his employment without adhering to his notice period, his employer could potentially sue him for a breach of contract if the employer can argue that the business has suffered a loss due to the employee's sudden departure. However, this seldom happens in practice.

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A sudden departure by an employee may impact on any reference the employee wishes to obtain from the employer!

Where an employee notifies his employer of his intention to resign, it cannot be retracted unless the employer agrees.

xxii) Relevant Collective Agreements

Employers must refer to any collective agreements (Registered Employment Agreements, Employment Regulation Orders or Sectoral Employment Orders), which affect the employee's terms and conditions of employment and indicate where the employee can obtain a copy of the agreement. An example would be the Employment Regulation Orders which apply in the Contract Cleaning and Security industries or the Sectoral Employment Orders which apply in the Construction and Electrical Contracting industries. These orders are binding on all employers in these sectors even though the employer was not directly involved in concluding the agreement.

xxiii) Disciplinary/Dismissal Procedures

The **Unfair Dismissal Acts 1977 to 2015** require an employer to provide an employee with information on disciplinary/dismissal procedures. The Code of Practice on Disciplinary Procedures contains guidelines on the application of such procedures, which may be used in a written statement and in any disciplinary situation. Alternatively, a company may have its own disciplinary procedures. The employer must give an employee a copy of its disciplinary procedure within 28 days of starting work.

This is of vital importance as the vast majority of unfair dismissal cases taken are based on the fact that the stipulated procedures were not followed by the employer before dismissing the employee. However, as highlighted by the following case, an employer may be justified in dismissing an employee during his probationary period without following fair procedures where the dismissal arises due to poor performance and the dismissal is expressly provided for in the employee's contract of employment. Fair procedures must be followed in cases involving dismissal due to misconduct.

Case Law: Donal O'Donovan v Over-C Technology Limited and Over-C Limited [2021] IECA37

The employee (Donal O'Donovan) commenced employment in August 2019 as Chief Financial Officer. He was notified in January 2020 that his employment was being terminated due to performance issues. His employer dismissed him with immediate effect, relying on a clause in the contract of employment which reserved the right to terminate the employment during the probationary period if performance was not up to the required standard. The employee was paid in lieu of 1 month's notice.

The employee applied for a High Court injunction preventing his dismissal on the grounds that there had been a breach of his constitutional and implied contractual rights to fair procedures. The High Court found that the employee established a strong case that he had an implied contractual right to fair procedures in the assessment of his performance during the probationary period. The High Court held that the employee had been dismissed for sub-standard performance during his probationary period without being afforded procedural fairness and granted an injunction preventing the employer from dismissing the employee and requiring the employer to pay his salary for 6 months from the end of January 2020.

On appeal by the employer, the Court of Appeal stated that the High Court judge failed to give

Terms of Employment (Information) Acts 1994 to 2014

adequate weight to the fact that the termination occurred during the probationary period and, during a period of probation, “both parties are – and must be – free to terminate the contract of employment for no reason, or simply because one party forms the view that the intended employment is, for whatever reason, not something with which they wish to continue”.

The Court of Appeal did not accept that a right to fair procedures can be implied during a probationary period (for anything other than misconduct) as to do so would negate the whole purpose of a probation period. The employer’s appeal was upheld and the employer was entitled to an order for costs in respect of both the hearing in the High Court and the appeal.

This decision makes clear that an employer can terminate an employment during a probationary period for any reason or no reason, provided adequate notice (statutory or contractual) is given, and the principles of natural justice do not apply, except in cases involving dismissal for misconduct.

Note: while employees with less than 1 year’s service are generally not entitled to make a claim under the **Unfair Dismissal Acts 1977 to 2015**, they are entitled to make a claim under the **Industrial Relations Acts 1946 to 2019**. In such cases, Adjudication Officers generally recommend that fair procedures should be followed in cases of dismissal during a probationary period. However, such recommendations are not legally enforceable.

The written statement must be signed and dated by or on behalf of the employer and given to the employee, and a copy retained by the employer. Alternatively, it can be provided in an electronic format once the information is accessible to the employee and it can be stored and printed. Where it is provided in electronic form, the employer must retain proof of the transmission or a receipt in electronic form.

Signed by Employer: _____ Date: _____

Important - As an alternative to providing the particulars required under items iv, x, xi, xiv, xv, xvii, xviii and xxi on the statement, an employer may use the statement to refer the employee to certain documents which contain these particulars, provided that the documents are reasonably accessible to the employee. For example, the employer may refer the employee to the provisions of relevant legislation, a collective agreement or a company handbook, a copy of which should be made available to the employee.

The above are the **minimum** terms required by law to be included in a written statement of terms of employment.

It is suggested that two copies of the written statement should be given to the employee, one to be signed by the employee and returned to the employer by a particular date and the other to be retained by the employee. Or alternatively, where the statement is provided in electronic format, it may be advisable to have some functionality which allows the employee to indicate that they have received it.

Where the written statement of terms of employment or the written statement of core terms of employment contains an error or omission, it will still be valid provided it can be shown in good faith, that the error or omission was due to a clerical mistake or due to an accident.

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Case Law: A Driver v An Employer (R051265/TE)

The employee was employed as a truck driver by the employer from November 2004 until January 2007. He was paid €550 per week. He submitted a complaint to the Rights Commissioner that he did not receive a statement of his terms of employment contrary to Section 3 of the Act. The employer accepted this was true and the Rights Commissioner awarded the employee €2,020 in compensation.

Case Law: A Worker v An Employer (R051420/TE)

The employee was employed as a general operative by the respondent employer from July 2006 until April 2007. He complained that he was not issued with a written statement as required by Section 3 of the Act. The employer argued that the employee concerned was given an induction programme, a copy of the company handbook and was provided with payslips. This, the employer maintained was sufficient to comply with Section 3 of the Act. The Rights Commissioner upheld the employee's complaint and required the employer to pay the employee €770 in compensation.

Case Law: Carey v Independent Newspapers – High Court 07.08.2003

Ms. Carey was a journalist with Ireland on Sunday and was approached by the editor of the Evening Herald with a view to finding out if she would be interested in working for them as their political correspondent. Ms. Carey said that she was interested in the position, but due to childcare responsibilities she would have to work from home for a part of each morning. Ms. Carey's working hours were never committed to writing. The editor of the Evening Herald left his position and the new editor requested Ms. Carey to be in the office each morning at 7.00am. As Ms. Carey was unable to comply with this request, her employment was terminated.

Ms. Carey sued the Evening Herald for wrongful dismissal, breach of warranty and for general damages for neglect, misstatement or misrepresentation. The judge stated that "where a new contract and terms of employment are being negotiated with prospective employees, there is duty of care on the part of the prospective employer to avoid making negligent misrepresentations/statements which are intended or have the effect of inducing an employee to leave his present position and which results in detriment to the employee". Regarding Ms. Carey's claim for wrongful dismissal the judge stated that "reasonable notice must be given to terminate the contact" and the Court concluded that a period of six months' notice would have been reasonable.

Ms. Carey was awarded €52,266 in damages after the Court concluded that the Evening Herald acted unlawfully in a number of ways i.e. failure to provide a properly drafted employment contract and the omission of proper termination procedures and notice periods.

4.1 What is the difference between a Contract of Employment and a Statement of Terms of Employment?

It is important to realise that a written statement of terms of employment is not necessarily the same as a contract of employment, although the two often overlap.

For example, a contract of employment may be in writing, or may be verbally agreed between the employee and the employer. If an employer was to offer a person a job at a rate of €400 per week and the person accepted that job offer, they would both have entered into a contract. A contract can be as simple as that, a verbal agreement. A contract of employment only comes into being once the contract has been accepted (i.e. there must be an offer of the position by the employer and an acceptance of the position by the employee). However, the problem with a verbal agreement is that there is a lot of detail missing, such as the terms regarding hours of work,

holiday entitlements, overtime rates, etc. There is no legal requirement for a contract of employment to be in writing.

A contract could be as simple as a letter issued to an employee offering a job and specifying the annual salary, the number of days of annual leave and the hours of attendance. While this could constitute a contract, it does not contain sufficient information as required under this legislation to qualify as a valid written statement of terms of employment.

However, a statement of terms and conditions of employment must be in writing and it must contain the specific terms of that employment which are contained in the Acts. What a statement of terms of employment does is to list certain details of the terms and conditions of the contract of employment. The details required by law in a statement of terms of employment are the most common and practical terms, which apply to every employment.

While a written statement of terms of employment is only required to set out the minimum terms required by law, a contract of employment may contain additional terms which are not required by the legislation, which we shall see later.

An employer is obliged to issue a written statement of terms of employment to the employee which must be signed and dated by the employer. There is no requirement for an employee to sign a written statement of terms of employment. A written contract of employment is generally signed by both the employer and the employee, with the employee's signature indicating his acceptance of the job and the terms contained in the contract.

A contract may still arise where an employee refuses to sign his contract of employment but continues to work and continues to be paid. However, it would be advisable for the employer to discuss the matter with the employee to resolve any concerns which the employee may have. Where an employee refuses to sign the contract, if the contract contains all the statutory terms and is issued within the required timeframes, the employer will have met his obligation under this Act.

5. Probationary Period

A probationary period is a period of time at the beginning of an employee's employment, during which their employer can assess the individual's suitability for permanent employment. There is no legal obligation on an employer to make use of a probationary period, although they are widely used in practice.

Prior to 16th December 2022, the duration of a probationary period was not specified in legislation and was a contractual matter between an employer and employee. In practice, probationary periods tended to range from 3 months to 6 months.

Since 16th December 2022, with the exception of public servants, the maximum duration of a probationary period is 6 months.¹³ The 6 month probationary period may be extended in exceptional circumstances where it would be in the interest of the employee, but it cannot be extended beyond 12 months in total. Where, on the 16th December 2022, an employee was subject to a probationary period which exceeded 6 months and the employee had completed at least 6

¹³ Section 6D inserted by European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

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months of his probationary period on that date, the probationary period expired on the earlier of the date on which it was due to expire or 1st February 2023.

Since 16th December 2022, the maximum duration of a probationary period for a public servant is 12 months. Broadly speaking, a public servant is any person employed by, or who holds any office or any other position, in a public service body.

An employer is permitted to suspend a probationary period where an employee is absent from work on certain types of leave such as maternity leave, adoptive leave, parental leave, carer's leave, paternity leave, parent's leave, statutory sick leave, with it resuming on the employee's return to work.

A probationary clause in a contract of employment may allow for the probationary period to be extended, subject to the maximum durations as outlined above.

6. Mandatory Training

Where an employer is required by law or collective agreement to provide training to an employee to carry out the work for which they are employed, such training shall be provided to the employee free of cost and shall count as working time. Where possible, this training should take place during working hours.¹⁴

For example, all workers in the construction sector must get safety awareness training and have a Safe Pass registration card before they can work on construction sites. The Safe Pass training programme is run by SOLAS and generally takes place as a 1 day training programme.

7. Parallel Employment

Since 16th December 2022, an employer shall not:¹⁵

- Prohibit an employee from taking up employment with another employer, or
- Subject an employee to adverse treatment for taking up employment with another employer,

where it occurs outside of the work schedule established with the first employer.

An employer may restrict an employee from taking up other employment if they have objective grounds for doing so and the restriction is proportionate. Examples of such objective grounds include:

- a) Health and safety,
- b) Protection of business confidentiality,
- c) Integrity of public service,
- d) Avoidance of conflicts of interest,
- e) Safeguarding productive and safe working conditions,
- f) The protection of safety of patients and people receiving care from the health service,
- g) The protection of national security,
- h) The protection of critical national infrastructure,
- i) The protection of energy security,
- j) The administration of vital public service functions,

¹⁴ Section 6G inserted by European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

¹⁵ Section 6E inserted by European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

- k) Compliance by the employer and the employee with any statutory or regulatory obligations,
- l) Compliance by the employee with any professional standards in force.

Details of any restriction, including the objective grounds on which the restriction is based, must be included in the contract of employment or in a written statement provided to the employee.

8. Transition to Another Form of Employment

An employee, who has completed their probationary period (if any) and has been in continuous service with an employer for at least 6 months, may request a form of employment with more predictable and secure working conditions, where available, and receive a reasoned reply from their employer.¹⁶

An employee can make such a request once in any 12-month period.

An employer must provide a reasoned written reply to the employee within 1 month of the request. In the circumstances of a subsequent request from the same employee where the situation remains unchanged, an oral reply is permitted.

9. Employment Outside the State

Employers should also note that, where an employee is assigned to employment outside the State for a period of at least 1 month, an employer is required to provide the following additional information relevant to the employment outside the State:¹⁷

- The country or countries in which the work outside the State is to be performed and its anticipated duration.
- Currency in which the employee is to be paid in respect of that period.
- Any benefits in cash or kind payable to the employee in respect of the employment outside the State.
- Any terms and conditions governing the employee's repatriation.

The information and written statement must be provided to the employee before he leaves the State. This additional information may be provided in an Appendix to the statement.

Where an employee is a posted worker within the meaning of the **European Union (Posting of Workers) Regulations 2016**, additional information must be provided to the employee prior to departure, as follows:

- 1) The remuneration to which the employee is entitled in accordance with the applicable law of the host Member State.
- 2) Allowances specific to the posting, if any, and any arrangements for reimbursing expenditure on travel, board and lodgings.
- 3) The link to the host Member States official national website relating to the posting of workers. For Ireland, this link is:

https://www.workplacerelations.ie/en/what_you_should_know/employment_types/posted%20workers/posted_workers.html

¹⁶ Section 6F inserted by European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

¹⁷ Section 4(1)

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Posted worker means a worker who, for a limited period of time, is required by his employer to carry out his employment duties in another EU Member State other than the State in which he normally works. It includes employees placed by an agency but does not include individuals who personally decide to seek out employment opportunities in another EU Member State. The EU Posted Workers Directives provide that a worker posted to the territory of a Member State is guaranteed the terms and conditions of employment that employees are guaranteed under the law of that Member State.

10. Changes in the Terms of Employment

The issue of whether an employer can change an employee's contract of employment is subject to various rules in employment law and collective bargaining.

Changes to a contract of employment can occur due to a change in the law, but otherwise, changes must be agreed between an employer and employee. Neither party can unilaterally decide to change the contract. This is a contractual matter which is not affected by this Act which requires an employer to inform an employee of any changes to the written statement of the terms of employment.

Changes to an employee's contractual terms such as pay, working hours, sick pay, etc. must be agreed between the employee and the employer. Where an employer and employee have reached agreement in relation to such changes which affect the employee's written statement of terms of employment, the nature and date of the change must be notified by the employer to the employee not later than the day the change takes effect.¹⁸

Where changes to an employee's contract of employment are introduced by law, for example, by extending the statutory period of maternity leave, parental leave, etc., then both the employer and employee must comply with the law. The requirement to notify employees of any changes does not apply where the changes result from a change in legislation, administrative procedures or collective agreements (trade union agreements) referred to in the written statement.

Case Law: *Stephen Darling v ESB Networks (ADJ-00036351)*

This case was 1 of 10 test cases taken against ESB Networks which affected 236 employees. In 2021, ESB Networks moved from paper based timesheets for employees claiming overtime to an app based system. The Independent Workers Union did not accept the terms of an industrial agreement (which was accepted by other unions) and claimed the employer was not permitted to enforce the change to the employee's terms of employment without agreement. The employer argued there was no change to the employee's terms of employment. The Adjudication Officer found that the new payment app was "not even a significant change to general work practices, but a relatively minor change" and that there was no need for an employer to obtain individual consent in writing when there was a collective agreement in place. He found there had been no unilateral change to the complainants' terms and conditions over the introduction of the app.

11. Non-Application of Certain Provisions

Where a relevant agreement (i.e. Registered Employment Agreement, Employment Regulation Order or Sectoral Employment Order) provides for:

- Maximum duration of a probationary period,
- Mandatory Training,

¹⁸ Section 5(1) as amended by European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

- Parallel Employment, or
- Transition to another form of employment,

the relevant provision(s) of this Act will not apply to any employee covered by the agreement.¹⁹

In addition, the above provisions of the Act do not apply to members of the judiciary, retained fire fighters, members of the Defence Force or members of An Garda Síochána.

12. Additional Terms to Include in the Written Statement

Although there are a number of terms which the Act states must be included in a written statement of terms of employment, there is no reason why an employer cannot include additional terms. The whole purpose of the written statement is to make absolutely clear to an employee what the terms of his employment are. An employer could add additional terms to avoid any confusion or uncertainty that might arise at a later date. Issues which may arise might include:

- Appearance / Dress Code – formal or casual.
- Compassionate leave – whether paid leave is granted for the death of a family member.
- Confidentiality clause – which prohibits the employee from disclosing confidential information obtained through the course of his work to a third party.
- Alcohol and drugs misuse policy – which aims to safeguard employees and others from the hazards of alcohol and drug abuse.
- Acceptable use of telephone, email and internet policy – which may provide that they may only be used for the purpose of the employee's duties.
- Severe weather conditions – where an employee cannot attend work due to extreme weather events or where an employer's ability to operate a business and provide work to employees is hazardous under the **Safety, Health and Welfare at Work Acts 2005 to 2014**.
- Study leave.
- Lay-off and short time – where the employer reserves the right to lay the employee off or reduce his working hours due a reduction in work.
- Data Protection Policy.
- Remote Working Policy.
- Business Travel arrangements.
- Health and Safety.

This is not an exhaustive list. Where additional clauses or policies are included, the employer should also specify what disciplinary action will be taken against an employee who breaches any of these policies.

13. Additional Requirement when Employing Young People

An employer must give an employee, under 18 years of age, a copy of the official summary of the **Protection of Young Persons (Employment) Act 1996**, within 1 month of taking up a job, in addition to the written statement of terms of employment. A copy of the official summary is included in the chapter on the **Protection of Young Persons (Employment) Act 1996**.

¹⁹ Section 6H inserted by European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

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14. Records

The Act specifies that an employer is required to retain the written statement for the duration of the employee's employment and for at least 1 year after the employment has ceased. The **Organisation of Working Time Act 1997** states that an employer is required to retain a copy of the written statement of terms of employment for 3 years from the date on which the statement was issued.

The employer should ensure that a copy of the written statement is held for the longer of these durations.

15. Offences

An employer is guilty of an offence where he fails to provide an employee with a written statement of the core terms of his employment within 1 month of commencement, or where the employer provides false or misleading information to an employee in relation to the core terms. On conviction, an employer is liable to a Class A fine not exceeding €5,000 or to imprisonment for a maximum of 12 months, or both. Where the offence has been committed by a company with the consent of a director, manager, secretary or other office of the company, this person can be convicted also.

In order to prevent frivolous claims, an employee cannot make a complaint to the WRC against the employer for failing to provide a written statement of core terms, unless he has been continuously employed for more than 1 month or the employer has previously been prosecuted for the same offence.

15.1 Fixed Payment Notice

A Fixed Payment Notice can be issued by an Inspector of the WRC to an employer who fails to provide an employee(s) with a written statement of core terms of employment within 1 month of commencement.

Fixed Payment Notices are dealt with in more detail in the chapter entitled "Introduction to Employment Law".

16. Protection from Penalisation

The Act prohibits an employer from penalising or threatening to penalise an employee on the grounds that:²⁰

- He has exercised or proposes to exercise his rights under the Act,
- For having in good faith opposed by lawful means an action which is unlawful under the Act,
- For giving evidence in any proceedings under the Act, or
- For giving notice of his intention to do any of the above.

Penalisation is defined as any act or omission that has a detrimental effect on an employee with respect to any term or condition of his employment and includes, but is not limited to, the following:

- Suspension or dismissal of the employee or the threat of either,
- Demotion or loss of opportunity for promotion,
- Transfer of duties,
- Change of location of place of work,

²⁰ Section 6C inserted by Employment (Miscellaneous Provisions) Act 2018

- Reduction in salary,
- Change in working hours,
- Imposition of a reprimand or other penalty, or
- Coercion or intimidation.

17. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled **Introduction to Employment Law**. If an employee is successful in taking an action against his employer the Adjudication Officer will issue a recommendation, which shall do one or more of the following:²¹

1. Declare that the complaint was or was not well founded,
2. Confirm all or any of the particulars contained or referred to in the written statement,
3. Alter or add to the written statement for the purpose of correcting any inaccuracy or omission in the statement,
4. Order the employer to give the employee a written statement containing such particulars as may be specified by the Adjudication Officer,
5. Order the employer to pay the employee compensation of such amount as is just and equitable, subject to a maximum of 4 week's remuneration. (Note: this is in addition to any compensation that an employer may be ordered to pay due to penalisation of an employee as outlined below).

An employee who makes a complaint that he has been penalised may be awarded compensation of such amount as is just and equitable, subject to a maximum of 4 week's remuneration.

Where an employee has *less* than 1 year's service and is dismissed, he cannot make a claim for unfair dismissal under the **Unfair Dismissals Acts 1977 to 2015**. However, a case may be referred to an Adjudication Officer under the **Terms of Employment (Information) Acts 1994 to 2014**. If an employee is successful in taking an unfair dismissal action against his employer under the **Terms of Employment (Information) Act 1994 to 2014**, the maximum compensation which can be awarded by an Adjudication Officer is 4 weeks' pay.

Where an employee has *more* than 1 year's service and is dismissed, a complaint may be referred under the **Terms of Employment (Information) Acts 1994 to 2014** or under the **Unfair Dismissals Acts 1977 to 2015**, but not both. It should be noted that the maximum compensation available for a successful claim under the **Unfair Dismissals Acts 1977 to 2015** is 2 years' pay in comparison to a maximum of 4 weeks' pay under the **Terms of Employment (Information) Act 1994 to 2014**.

Case Law – ADJ-00005580

An employee lodged a complaint against his employer as he had not received a signed contract of employment when he was re-hired on 28th November 2008 following a previous period of employment from October 2005 to February 2006. He worked continuously for the employer from November 2008 until he commenced sick leave in October 2014. He signed a statement of his terms of employment in October 2005 and he received a copy of the staff handbook in April 2009. The employee requested a copy of his contract in October 2015.

²¹ Section 7(2) as amended by the Workplace Relations Act 2015

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The employer sent him a copy of the 2005 signed terms of employment, the staff handbook which he received in April 2009 and the Employment Regulation Order (ERO) relating to the cleaning industry outlining the revised rate of pay.

*The employee argued that he did not receive a contract within 8 weeks of being rehired in November 2008 and sought a compensatory award for this alleged breach of the **Terms of Employment (Information) Acts 1994 to 2014**.*

*The Adjudication Officer acknowledged that the staff handbook and the ERO provided by the employer went some way to explaining the employee's terms of employment, however the Adjudication Officer found that there was a continuous breach of the **Terms of Employment (Information) Acts 1994 to 2014** by the employer since the employee was rehired on 28th November 2008. While the employee was seeking a compensatory award, no evidence was presented by the employee to show how the omissions affected him or caused him any detriment. The Adjudication Officer found that the just and equitable remedy was for the employer to issue a comprehensive document, containing all the terms of employment as outlined in the Act within 4 weeks of the date of the decision.*

18. Compliance Notice

An Inspector of the Workplace Relations Commission can issue a Compliance Notice to an employer under the **Terms of Employment (Information) Acts 1994 to 2014** where the employer does not provide an employee with a written statement of terms of employment within 1 month of commencement containing all the relevant information or where an employer fails to inform an employee of changes to the written statement on or before the date the change takes effect.

See the Introduction to Employment Law chapter for further information on Compliance Notices.

19. References

Many employers require a reference to be provided by a prospective employee prior to an offer of employment being made. However, there is no legal requirement for an employer to give an employee, or former employee, a written or oral reference. If a reference is being provided it must be fair, accurate and not misleading. However it does not have to be comprehensive and could merely state that the employee was employed for a specified period of time.

Case Law: HSE v A Worker (AD1248)

This case involved the withdrawal of a permanent job offer by the HSE after an unsatisfactory and disputed internal reference was received in respect of the applicant who was a temporary employee of the HSE. The employee argued that issues stated in the reference were unfounded and untrue and she was not given any opportunity to have them resolved.

The Labour Court recommended that the HSE pay the employee €10,000 due to the distress caused to the employee and that the employee be continued in a temporary capacity pending her appointment to the next suitable permanent vacancy which became available.

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Payment of Wages Act 1991

- 1. Main Provisions**
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-

1. Main Provisions

The **Payment of Wages Act 1991** gives an employee the right to:

- A negotiable mode of wage payment,
- A written statement of wages and deductions (i.e. a payslip), and
- Protection from unlawful deductions from wages.

2. Covered Employees

The Act applies to all employees engaged under a contract of employment or apprenticeship, employed through an employment agency or through a subcontractor or working for the State.¹

3. Meaning of Wages

The Act defines wages as any amount payable to the employee by the employer in connection with his employment. This includes:²

- Normal basic pay as well as any overtime
- Shift allowances or other similar payments
- Any fee, bonus, or commission
- Any holiday pay, sick pay, maternity, paternity, parent's or adoptive pay
- Any other return or payment for work (under a contract of employment or otherwise)
- Any sum payable to an employee in lieu of termination of notice of employment

The following payments are not regarded as wages under the Act:³

- Any payment of expenses incurred by the employee, in carrying out his employment

¹ Section 1(1)

² Section 1(1)(a) & (b)

³ Section 1(1)(i)–(v)

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- Any payment by way of a pension, allowance, or gratuity, in connection with the death, retirement or resignation of an employee or compensation for loss of office
- Any payment referable to the employee's redundancy
- Any payment to the employee otherwise than in the employee's capacity as an employee
- Any payment-in-kind e.g. gift, voucher, etc. or benefit-in-kind e.g. company car, etc.
- Any payment by way of tips or gratuities.

4. Methods of Wage Payment

The legally acceptable methods of wage payment include:⁴

- Cheque, or bank draft, drawn on any of the commercial banks or a Trustee Savings Bank,
- A payable order issued by a Minister of the Government or a public authority,
- A postal order, money order, paying order or warrant issued by, or drawn on, An Post,
- A credit transfer to an account specified by an employee. Euro bank accounts in the Single European Payments Area (SEPA)* have an International Bank Account Number (IBAN). Employees are entitled to be paid into an account with a SEPA IBAN in respect of euro transfers. Employers cannot insist that the employee opens an Irish bank account for euro transfers.
- Cash.

*SEPA consists of all EU Member States as well as the United Kingdom, Iceland, Liechtenstein, Monaco, Norway, Switzerland, Andorra, San Marino and the Vatican City.

Where an employee is normally paid in a method other than cash, employers are required to make alternative arrangements for paying wages, where a strike or industrial action affects a financial institution, and as a result the normal method of payment is not readily available. Under such circumstances, with the employee's consent, one of the alternative methods of payment can be used. Where the employee does not consent to this alternative method of payment, he must be paid in cash.

In essence, the Act tries to reduce the payment of wages in cash, because of the security risk involved. The employer may choose the method of payment, which is usually a term of the contract, whether express or implied. However, where employees were paid in cash prior to the introduction of this Act on 1st January 1992 they are entitled to continue to receive their wages in cash unless and until they reach an agreement with their employer to be paid in one of the other acceptable methods already outlined.

Where an employer pays wages to an employee in a form not mentioned above, he shall be guilty of an offence and shall be liable to a Class C fine not exceeding €2,500.⁵

5. Tips and Gratuities

The **Payment of Wages (Amendment) (Tips and Gratuities) Act 2022** came into effect on 1st December 2022 and provides further protection for employees working in industries where the payment of tips is a common occurrence. As specified in Regulations⁶, the Act applies to employers in the following sectors:

⁴ Section 2(1)

⁵ Section 2(3)

⁶ Payment of Wages Act 1991 (Application of Sections 4B to 4F) Regulations 2022 - S.I. No. 544 of 2022

- Cafés, restaurants, bars, nightclubs or any other business which includes the sale of food or drink (including alcohol) for consumption on the premises.
- Stalls, markets, kiosks, pop-up coffee shops, etc. which sells food or drink (including alcohol), **excluding** any business operating wholly on a charitable basis.
- Hotels, guesthouses, hostel, bed and breakfast, self-catering accommodation facility or any similar accommodation facility.
- Guided tours.
- Non-surgical cosmetic procedures including cosmetic nail care or nail styling, hair care or styling, tattoo services, piercing services, skin care services.
- Casinos, amusement halls, funfairs, etc.
- Bookmaker.
- Providers of transport services (e.g. taxis, bus tours, etc.) **excluding** transport services provided under a public service obligation (PSO) contract (e.g. Dublin Bus, Bus Éireann, Iarnród Éireann, Luas, Local link operators, etc.) and school transport services.

In addition, the Act applies to the **providers of a website or app** used for ordering:

- Food or drink (including alcohol) for delivery, or
- Taxis,

who engage contract workers to provide the service.

The Act provides that employers in these industries:

- Cannot use tips, gratuities or mandatory charges to top up the contractual wages of employees,
- Must distribute electronic tips or gratuities and mandatory charges in a fair and equitable manner, and
- Must inform the public and customers of the employer's policy on the distribution of tips, gratuities and mandatory charges by displaying the policy on the premises and/or on the company website.

The definition of tips, gratuities, and mandatory charges in the Act is as follows:

- A **tip or gratuity** is a payment that is made voluntarily by the customer, in circumstances where a reasonable person would likely infer that the customer intended or assumed it would be kept by, or distributed to, the employee, or to a group of employees. This would also include payments to individuals who provide services to the employer but not as an employee (e.g. self-employed delivery drivers).
- A **mandatory charge** is a contractually imposed and receipted payment that a customer is required to pay in order to receive goods or services by, or on behalf of, an employer, and is payable in addition to the cost of the goods or services. An example of a mandatory charge would be a service charge that might be charged to a customer in a restaurant.

5.1 Distribution of Tips

Employers who are covered by the Act are required to distribute **electronic tips** (i.e. where the tip or gratuity is paid by card, phone, an app, etc.) to employees in a fair and equitable manner.⁷ Service charges, whether paid by the customer electronically or in cash, must be treated as if they were an electronic tip or gratuity.

⁷ Section 4B

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Employers are required to consult with employees in relation to their policy on the distribution of tips, however employee consent is not required and it is up to the employer to decide on their distribution policy. Employers are required to include their policy regarding the distribution of tips and gratuities in an employee's core terms of employment which must be issued to the employee within 5 days of commencement.

An employer is not permitted to retain a share of tips, gratuities or service charges except where the employer:

- Makes a deduction for the reasonable cost that may arise for the employer in administering the payment of electronic tips and gratuities. For example, a VAT registered business is liable to account for VAT on service charges which are included on the bill, hence it would appear that this business could retain the VAT element of the service charge with the balance being available for distribution to employees.
- Regularly performs, to a substantial degree, the same work as some or all of the employees.

Where the employer retains a share of tips because he performs the same work as the employees, he should only deduct an amount which is fair and reasonable having regard to the amount of work that he performs.

Where an employee makes a complaint to the Workplace Relations Commission (WRC) regarding whether or not tips were distributed in a fair manner, the Adjudication Officer will have regard to all relevant factors, including:

- a) The seniority or experience of the employee,
- b) The value of sales, income or revenue generated for the business by the employee,
- c) The number of hours worked during the pay period in which the tip was made,
- d) Whether the employee is working full-time or part-time,
- e) The role and influence of the employee in providing the service to customers,
- f) Whether the employee was consulted as to the manner of the distribution, and
- g) Whether there is a formal or informal agreement between the employer and the employee as to the manner in which tips are distributed.

Where an employer fails to treat a service charge in the same manner as an electronic tip or gratuity, he shall be guilty of an offence and liable, on summary conviction, to a Class C fine not exceeding €2,500.

5.2 Prohibition on Deducting Tips from Wages

Employers who are covered by the Act are prohibited from:⁸

- Using electronic tips and gratuities (or service charges) to make up part of an employee's contractual wages,
- Deducting electronic tips and gratuities (or service charges) from an employee's contractual pay,
- Making deductions from an employee's tips and gratuities except for statutory deductions (e.g. income tax, USC, PRSI, Local Property Tax, etc.) or the reasonable cost that may arise for the employer in administering the payment of electronic tips and gratuities.

⁸ Section 4C

5.3 Statement of Distribution of Tips

Where an employer distributes an amount of tips, gratuities or service charges to employees, he must issue a statement to an employee within 10 days of any such distribution, outlining the total amount of tips or gratuities distributed by the employer for that period to which the statement relates, and the amount distributed to that employee.

The statement should be treated as confidential by both the employer and the employee. An employer must consult with employees if he wishes to make a material change to his distribution policy.

Most payroll software providers have amended the layout of their payslip so that it can be used to satisfy this requirement.

Where an employer fails to provide a statement of distribution within 10 days, he shall be guilty of an offence and liable, on summary conviction, to a Class C fine not exceeding €2,500.

5.4 Tips and Gratuities Notice

Employers (or operators of websites or apps who engage contract workers) are required to clearly **display a Tips and Gratuities Notice⁹** in each of the following locations as appropriate:

- On the premises where the service is provided and in at least one additional location where the service is paid for,
- In a public service vehicle where it is easily accessible by the passenger,
- On each online digital platform used by the employer in connection with the service.

A Tips and Gratuities Notice must include:

- A statement to the effect that the **Payment of Wages Act 1991** requires the employer to distribute to his employees any electronic tips or gratuities (including service charges) received by the employer,
- A statement of the employer's policy on tips or gratuities made to, or left for, employees in a form other than an electronic mode of payment.

While employers are required to include detail on how cash tips are dealt with in their Tips and Gratuities Notice, there will be no other regulation of cash tips.

Where an employer fails to display a Tips and Gratuities Notice, he shall be guilty of an offence and liable, on summary conviction, to a Class C fine not exceeding €2,500.

5.5 Taxation of Tips

Where tips are routed through the employer (e.g. contents of a tips jar shared out between employees at the end of a shift, electronic tips and gratuities or service charges) received from customers to an employee, these payments are treated as pay, and liable to PAYE, PRSI and USC in the normal way through payroll, regardless of whether the customer pays the tip by cash, card or electronically.

If employees receive tips directly from customers, they are not taxable through payroll, but the employee must declare this income on their tax returns.

⁹ Section 4E

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6. Written Statement of Wages

An employer is obliged to provide each employee with a written statement of wages (i.e. a payslip) with each wage payment.¹⁰ The statement must accompany the wages, except in cases of credit transfer where it must be provided to the employee as soon as possible following the credit transfer. The payslip must show:

- The gross amount of wages payable, and
- The nature and amount of any deductions from the gross amount.

The employer is obliged to treat the information contained in the payslip as confidential.

While the Act provides that an employer must provide an employee with a written payslip, the **Electronic Commerce Act 2000** provides that where a person (e.g. an employer) or a public body is required to give information in writing (e.g. a payslip), whether or not in a form prescribed by law, then that information may be given in electronic format subject to:

- The information being readily accessible to the person to whom it is issued, and
- The person who is in receipt of the information consents to it being given in electronic form.

Where a payslip contains an error or omission, it is still regarded as a valid statement of wages, provided that it can be shown that the error or omission was due to a clerical mistake, or that it was made accidentally and in good faith. Of course, the mistake must be rectified as soon as possible.¹¹

6.1 Fixed Payment Notice

A Fixed Payment Notice can be issued by an Inspector of the WRC to an employer who fails to provide his employee(s) with a payslip.

For employers who are covered by the **Payment of Wages (Amendment) (Tips and Gratuities) Act 2022**, a Fixed Payment Notice can also be issued where the employer fails to:

- Issue a statement within 10 days to an employee outlining the total amount of tips or gratuities distributed by the employer for that period to which the statement relates, and the amount distributed to that employee.
- Treat mandatory or service charges as an electronic tip, or
- Display a tips and gratuities notice stating how tips and gratuities are dealt with.

Note: The **Workplace Relations Act 2015** provides that a Fixed Payment Notice can be issued in each instance where a breach occurs. For example, if an employer has 10 employees and fails to provide a payslip to any of them, he could in theory be issued with 10 Fixed Payment Notices. However, it is generally the practice of the WRC to issue 1 Fixed Payment Notice to cover all employees.

The **Workplace Relations Act 2015 (Fixed Payment Notice) Regulations 2015** confirms that the fine for failing to provide a payslip is €1,500. At the time of writing, these Regulations have not been updated to provide for the level of penalty applicable in respect of breaches of the tips and gratuities provisions as outlined above.

¹⁰ Section 4(1)

¹¹ Section 4(3)

Fixed Payment Notices are dealt with in more detail in the chapter entitled **Introduction to Employment Law**.

7. Deductions from Wages

There are only 3 circumstances in which an employer may legally make deductions from an employee's wages (or receive any payments from an employee).¹² These are:

- If the deduction or payment is required or authorised by law (e.g. Income Tax, PRSI, USC, Local Property Tax (LPT), Additional Superannuation Contribution (ASC), an Attachment of Earnings Order (AEO) or a Notice of Attachment. An AEO may be issued by a Court requiring an employer to make a deduction from an employee's wages in respect of maintenance payments or in respect of an unpaid fine. Both Revenue and the Department of Social Protection (DSP) have the power to issue a Notice of Attachment to an employer requiring the employer to make deductions from an employee's wages and pay it over to the issuing department.
- If the deduction or payment is provided for in the contract of employment (e.g. employee pension contributions, deductions for uniforms, etc.).
- If the deduction is agreed to in writing, in advance, by the employee (e.g. medical insurance subscriptions, trade union dues).

7.1 Non Payment of Wages

Where an employer fails to pay wages which are properly due to an employee, this will be treated as a deduction made by the employer from the wages of the employee and shall be a breach of the **Payment of Wages Act 1991**.

Case Law: Employee v Employer PW212/2009

The appellant was a teacher employed by the respondent and paid by cheque. As part of the modernisation programme contained in the 'Towards 2016' agreement all comparable staff were required to be paid by electronic funds transfer. The teacher refused to transfer to electronic funds transfer and as a result he did not receive the pay increase directly associated with adherence to the modernisation programme. The acceptance of electronic transfer as a payment method was part of the modernisation programme. The teacher contended that the non-payment of the pay increase constituted a deduction as per Section 5 of the Payment of Wages Act 1991.

The teacher informed the Tribunal that he did not receive the final 2.5% of the 10% increase as provided for under the 'Towards 2016' agreement. The teacher and his union voted no to the 'Towards 2016' agreement, however the agreement was passed on a majority vote and the Tribunal decided the teacher was bound by the terms of the agreement.

The final payment of 2.5% was withheld because of the teacher's failure to comply with one of the provisions of the 'Towards 2016' agreement i.e. electronic transfer of wages. In the circumstances his employer was entitled to withhold the payment and therefore that sum was not 'properly payable' to him as part of his wages.

¹² Section 5(1)

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7.2 Deductions from Wages – Special Conditions

There are special conditions, which apply to employers making deductions from wages, which:¹³

- a) Arise from any act or omission of the employee (e.g. till shortages, breakages), or
- b) Are in respect of the supply to an employee, by the employer, of goods or services necessary to the employment (e.g. uniforms, training, etc.).

Any such deduction (or payment to the employer) must satisfy the following conditions:

- The deduction, or payment to the employer must be provided for in the contract of employment (whether expressed orally, in writing, or implied).
- The amount of the deduction, or payment, must be fair and reasonable having regard to all circumstances, including the amount of wages of the employee i.e. if it is substantial it should not be taken out of one single wage payment.
- Prior to the act or omission occurring, the employee must have previously been given written details of the terms of the contract of employment, governing deductions or payments, by the employer.

Written notice must be given to the employee in the case of each deduction or payment to the employer at least one week prior to the deduction being made and the employer must provide a receipt.¹⁴ The deduction cannot take place more than six months after the employee's act or omission becomes known to the employer or after the provision of goods and services to the employee. However, where a series of deductions are to be made, the first deduction must be made within six months. Most importantly, the deduction or payment cannot be more than the cost to the employer. In other words, the employer should not profit from the deductions.

Example 1

John works in a shop, which sells a range of crystal. He accidentally drops a crystal vase which smashes on the floor. The vase normally retails for €125. The vase cost his employer €73.80 (€60 plus €13.80 VAT) to buy. Under the terms of his contract of employment, John is liable to pay for any breakages, which he is responsible for. As a VAT registered trader, the employer is entitled to reclaim the VAT incurred on the purchase of the vase, so he is only entitled to deduct €60 from John's salary for the breakage, as this is the net cost of the vase to the employer.

Case Law: Downey v Ryanair Plc.

The employer deducted €3,336.46 from the employee's wages when he was leaving the company to work elsewhere. The sum it was alleged was in compliance with a term in the employee's contract that he would be liable to repay to Ryanair Plc. the cost of his training course should his employment be terminated before the end of 2 years' service. The Employment Appeals Tribunal, on appeal, upheld the Rights Commissioner's decision that the deduction from the claimant's wages was not fair or reasonable, firstly because the requisite notice (one week) of the intention to deduct the sum was not made pursuant to Section 5(1) of the Payment of Wages Act 1991 nor was the deduction made within 6 months of the completion of the course in breach of Section 5(2)(vii) of the Act. Accordingly, Ryanair Plc. had to repay the sum deducted.

Case Law: Gaynor v Minister for Defence

The Defence Forces withheld the wages of an employee pending a court martial for alleged absence from duty. The employee had submitted a certificate from a doctor which covered the

¹³ Section 5(2)(i)-(vii)

¹⁴ Section 5(1)

alleged absence. The Payment of Wages Act 1991, Section 5(2) states that “an employer shall not make a deduction from the wages of an employee in respect of any act or omission of the employee...unless...the deduction is fair and reasonable having regard to all the circumstances...the employee has been furnished, at least one week before making the deduction, with particulars in writing of the act or omission and the amount of the deduction”. The Defence Forces relied upon a section of the Defence Act 1954 to justify the deduction. The Rights Commissioner found that there was no unlawful deduction. On appeal to the Employment Appeals Tribunal by the employee, it was held that the Defence Forces were bound by Section 5 of the Payment of Wages Act 1991 despite the provisions within the Defence Act 1954.

7.3 Compliance Notices

An Inspector of the Workplace Relations Commission can issue a Compliance Notice to an employer under the **Payment of Wages Act 1991** where the employer makes an unlawful deduction from an employee's wages. See the Introduction to Employment Law chapter for further information on Compliance Notices.

8. Overpayment of Wages

An overpayment of wages is covered by the **Payment of Wages Act 1991** to the extent that an employee cannot take a case under this Act against his employer, where the employer merely recovers an overpayment of wages or expenses from the employee.¹⁵ This means that where an employer makes an overpayment of wages or expenses to an employee, he may recover that overpayment from the employee and the employee is specifically excluded under Section 5(5) of the **Payment of Wages Act 1991** from taking action against the employer under the provisions of the Act. How an overpayment of wages is dealt with depends on whether the overpayment is a mistake of law or of fact.

If the overpayment is a mistake of law then the sum is not recoverable by the employer but this would be an extremely rare occurrence (e.g. if the Dependant Relative tax credit was deemed unconstitutional and all taxpayers who had claimed this tax credit had to repay the equivalent amount to Revenue, the employer would not be liable for any employees underpayment of tax arising, as he had merely complied with the law as it was at the time).

If the overpayment is a mistake of fact i.e. the employee was overpaid in error, then the sum may be recoverable (e.g. if an employee is mistakenly paid while on unpaid parental leave, or an employee's wage was calculated incorrectly). This only applies where the purpose of the deduction is to reimburse the employer in respect of an overpayment made to the employee in carrying out the duties of his employment, and the amount of the deduction does not exceed the amount of the overpayment. If the employee has left the employment and there is a balance of an overpayment still outstanding, the employer will simply have to seek payment as he would from any other debtor.

Example 2

An employee ceases employment with his employer on 30th June. He has already taken 3 weeks paid holidays in the year, but he is only entitled to 2 weeks paid holidays up to the end of June. He has therefore been overpaid one week's holiday pay. His employer wants to deduct the week's holiday pay from his final payment.

¹⁵ Section 5(5)

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His employer may deduct the overpayment as the deduction is to reimburse the employer in respect of the overpayment of wages (which includes holiday pay), provided that the amount of the deduction does not exceed the amount of the overpayment. If the overpayment cannot be deducted from the employee's wages, (e.g. insufficient wages in the final payment) the employer will simply have to pursue the outstanding debt as he would pursue any other debt owed to the business.

The following law cases illustrate two situations where a person was incorrectly overpaid and when the cases went to court, the outcomes were interesting.

Case Law: Avon County Council v Howlett

A teacher on sick leave following an accident was regularly overpaid by mistake as the Council failed to realise that Mr. Howlett had been off sick for more than six months. The Council sought to recover the overpayment, but Mr. Howlett refused to return the money. The courts held that the Council could not recover the overpayment as it had led Mr. Howlett to believe that he was entitled to treat the money as his own, that he in good faith altered his position as a result, and the overpayment was not caused primarily by the fault of the employee.

However, the Court also stated that if Mr. Howlett still had the money in his possession the outcome might have been different.

There is no guarantee that an Irish court would arrive at the same conclusion, but the case does illustrate the fact that where an employee had clearly been overpaid, recovery of the overpayment is not always a straightforward matter.

Case Law: Kilkenny County Council v Irish Municipal, Public and Civil Trade Union

The employee was employed by the Council and was entitled to a salary scale plus an allowance of 17.5% of salary in respect of travelling expenses. In 1997 the employee was re-deployed and was no longer entitled to the 17.5%. In error the employee continued to receive the 17.5% from 1st March 1998 to 30th October 1999. The Council stated that £6,058.65 was to be repaid by the worker as an overpayment occurred. The Union stated that the amount was not due as there was an agreement that his salary and expenses were to be reviewed but this did not take place. The issue was referred to the Rights Commissioner for investigation and he recommended that an amount of £4,038.65 be repaid at the rate of £80 per month. The Council appealed the Rights Commissioner's recommendation to the Labour Court which decided that the full amount outstanding to the Council should be repaid by the employee on the terms recommended by the Rights Commissioner.

9. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled "Introduction to Employment Law". If an employee is successful in taking an action against his employer, the Adjudication Officer will issue a determination. The Adjudication Officer can order the employer to pay a reasonable amount of compensation to the employee, which will not exceed:¹⁶

- a) The net amount of the wages, or tip or gratuity as the case may be, that would have been paid to the employee in respect of the week immediately preceding the deduction from the employee or payment to the employer, after the making of lawful deductions (e.g. Income Tax, PRSI and USC), if the deduction had not been made, or

¹⁶ Section 6 as amended by the Workplace Relations Act 2015

- b) If the amount of the deduction or payment is greater than the wages or tip or gratuity as the case may be, specified in (a) above, twice the amount of the deduction or payment.

10. Records

The **Payment of Wages Act 1991** makes no direct reference to records of payslips to be retained by the employer. The **Workplace Relations Act 2015** provides a WRC Inspector with the following powers:¹⁷

- To enter in any premises where he has reasonable grounds to believe that it has or is being used as an employment or that employment records are being kept there. (Note: an inspector can only enter a dwelling with the consent of the occupier or pursuant to a warrant issued by the District Court),
- To inspect, and take copies of, any books, records or other documents he finds in the course of his inspection at the place of employment,
- To remove books, records or other documents from the workplace and retain them for any length of time he considers necessary.

Employers should ensure they are keeping adequate records (manual or electronic form) to prove that they are complying with the Act.

¹⁷ Workplace Relations Act 2015, Section 27

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National Minimum Wage Acts 2000 and 2015

- 1. Main Provisions**
 - 2. Covered and Excluded Employees**
 - 3. Payment of Less than the Minimum Wage**
 - 4. Pay Reference Period**
 - 5. Average Hourly Rate of Pay**
 - 6. Reckonable Pay**
 - 7. Earnings in Excess of the National Minimum Wage**
 - 8. Record Keeping**
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 - 10. Redress Provisions**
 - 11. Victimisation of an Employee**
 - 12. Employer in Financial Difficulty**
 - 13. Low Pay Commission**
 - 14. Living Wage**
-

1. Main Provisions

The **National Minimum Wage Acts 2000 and 2015** provide that every employer must pay his employees a minimum wage. The Act sets out how that wage may be calculated and what relevant factors must be taken into account.

Since 1st January 2023, the national minimum wage is €11.30 per working hour¹ (previously €10.50) and is payable to every experienced adult worker. The national minimum wage is a gross amount (i.e. before tax, PRSI or USC is deducted).

2. Covered and Excluded Employees

The national minimum wage is payable to an ‘experienced adult worker’. This is an employee who is aged 20 years or over.

The Acts apply to all employees working under a contract of employment, whether full-time or part-time, temporary or casual, for any hours worked, with the following exclusions:²

- An employee who is a close relative of the employer e.g. spouse, civil partner, parent, grandparent, step-parent, child, grandchild, step-child, sibling, half-brother, or half-sister of the employer, or

¹ National Minimum Wage Order 2022 - S.I. 500/2022

² Section 5

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- An apprentice within the meaning of the **Industrial Training Act 1967** and **Further Education and Training Act 2013** (e.g. printer, plumber, electrician, mechanic, carpenter/joiner, etc.). **S.I. No. 168 of 1997** contains a comprehensive list of apprenticeships. Some recent additions to the list of apprenticeships include Accountancy, Bakery, Culinary, Financial Services, Heavy Goods and Insurance Industries - **S.I. Nos. 377 – 382 of 2016**; Information and Communications Technology and Butchery - **S.I. Nos. 307 and 308 of 2017**; Property Services Industry - **S.I. No. 199 of 2018**, Retail Industry, Logistics Industry and Laboratory Industry - **S.I. Nos. 407 – 409 of 2018**; Process Analytics Industry - **S.I. No. 200 of 2019** as amended by **S.I. 129 of 2021**; Geoscience Industry and Hairdressing Industry - **S.I. Nos. 511 and 512 of 2019**; Digital Production Industry – **S.I. No. 601 of 2019** and Sales Industry – **S.I. No. 690 of 2019**; Recruitment Industry – **S.I. No. 288 of 2020**; Arboriculture Industry – **S.I. No. 289/2020**; Hospitality (Food and Beverage Industry) – **S.I. No. 782/2021**; and Sports Ground Industry – **S.I. No. 405/2022**.

As statutory apprenticeships and the employment of close relatives are not covered by the Act, the rate of pay can be agreed between the employer and the employee/apprentice which is not subject to the minimum rates as outlined in this Act.

3. Payment of Less than the Minimum Wage

The Act states that the rates for employees who are under 18, aged 18 years and aged 19 years will be set by the Minister for Enterprise, Trade and Employment. The current rates for these employees are as follows:³

- Workers under 18 years of age are entitled to €7.91 (previously €7.35) which is 70% of €11.30 per working hour,
- Workers who are 18 years of age are entitled to €9.04 (previously €8.40) which is 80% of €11.30 per working hour, and
- Workers who are 19 years of age are entitled to €10.17 (previously €9.45) which is 90% of €11.30 per working hour.

Example 1

Mary commenced employment on her 16th birthday. What is the statutory minimum hourly rate Mary must be paid for the next 4 years, using the current rates of pay in the National Minimum Wage Acts 2000 and 2015?

Solution 1

Mary is entitled to a minimum hourly rate of €7.91 for the next 2 years, until she reaches the age of 18 years. In the third year she must be paid at least €9.04 per hour as Mary is aged 18. In year four, she must be paid at least €10.17 per hour as she is aged 19.

Example 2

Séan commenced employment for the first time in April aged 25. What is the statutory minimum hourly rate Séan must be paid for his first year of employment using the current rates of pay in the National Minimum Wage Acts 2000 and 2015?

Solution 2

Séan is entitled to be paid €11.30 per hour as he aged 20 years or over.

³ National Minimum Wage (Prescription of percentages of hourly rates of pay) Order 2019 - S.I. 72/2019

Example 3

Barry obtained 6 months' work experience when he was under the age of 18 years. He was unemployed until he got a job on his 19th birthday. What is the statutory minimum hourly rate Barry is entitled to for the next 2 years, using the current rates of pay under the National Minimum Wage Acts 2000 and 2015?

Solution 3

Barry is entitled to a minimum of €10.17 for the first year (i.e. until his 20th birthday). Thereafter, he is entitled to a minimum hourly rate of €11.30.

The examples illustrate an employee's statutory minimum hourly rate of pay. However, he may be paid more if the employer wishes.

4. Pay Reference Period

Every employer must select a pay reference period for each employee.⁴ This is used to calculate the employee's average hourly rate of pay. The pay reference period may be a week, a fortnight, or more, but no longer than a calendar month.⁵ Under the **Terms of Employment (Information) Acts 1994 to 2014**, an employer must notify employees, in writing of the pay reference period selected and other terms of employment within 5 days of taking up employment.

An employer may select a pay reference period (e.g. a calendar month) but may continue to pay the employee on an alternative basis (e.g. weekly).

5. Average Hourly Rate of Pay

The pay reference period for each employee is used to calculate the employee's average hourly rate of pay.⁶ This is done by dividing the gross reckonable pay earned by an employee in a pay reference period by the number of the employee's working hours in that pay reference period. The resulting figure is the employee's average hourly rate of pay. The resulting average hourly rate of pay *must not* be less than the applicable minimum hourly rate of pay set out in the Act.

5.1 Working Hours

The number of working hours of an employee in a pay reference period includes normal working hours, any overtime hours; time spent travelling on official business, time spent on standby in the workplace and any training or study time during normal working hours.

Working hours *do not* include time spent on standby or on call outside of the workplace, annual leave, sick leave, maternity leave, adoptive leave, paternity leave, parental leave, parent's leave, carer's leave, while laid off, on strike or lock-out, time for which an employee is paid pay in lieu of notice, or time spent travelling between an employee's home and place of work and back.⁷ Other legislation governs the rights of employees during some of these periods of absence from the workplace.

⁴ Section 8

⁵ Section 10

⁶ Section 8(1)

⁷ Section 8(2)

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5.2 Employee's Hours not Controlled by Employer

If an employee's hours of work are not normally controlled by the employer,⁸ the employee is still covered by the **National Minimum Wage Acts 2000 and 2015** (e.g. a home worker, which is an employee who works from home and who controls his own hours of work and is usually paid on an output or productivity basis). An employer must ensure that such an employee's reckonable pay when divided by his hours of work is not less than the employee's statutory minimum hourly entitlement under the Act.

At the end of a pay reference period, the employee must give his record of working hours to the employer as soon as possible. If the employee does not provide such a record of working hours to the employer, the employer is entitled to calculate the employee's working hours from other sources (e.g. contract of employment).

Where an employee is likely to earn an average of more than 150% of the current national minimum hourly rate of pay for an experienced adult worker (i.e. €16.95 (€11.30 x 150%) per working hour in the pay reference period), the employee is not obliged under the Act to keep a written record of the working hours or submit it to the employer.⁹ It is a criminal offence for an employee to knowingly submit false or misleading information to an employer, which could result in a Class C fine not exceeding €2,500.¹⁰

6. Reckonable Pay

Reckonable pay is the payments, which are allowable in calculating the average hourly rate of pay of an employee in order to determine whether an employee has been paid his minimum entitlements under the Act.¹¹ Reckonable pay includes:

- Basic pay
- Shift premium
- Piece and incentive rates, commission and bonuses, which are productivity related
- Monetary value of board and lodgings (amounts stated below)
- Service charge distributed to employees through the payroll
- Payments under the zero hours protection of the **Organisation of Working Time Act 1997**

Where an employer provides board and/or lodgings to an employee, a monetary allowance can be included as reckonable pay up to the following amounts, which are applicable since 1st January 2023:¹²

- €26.70 per week (7 days) or €3.81 per day for lodgings only, and/or
- €1.01 per hour worked for board only.

6.1 Non-Reckonable Pay¹³

Any of the following payments received by an employee in a pay reference period are *not* reckonable pay and therefore are *not* allowable in calculating an employee's average hourly rate of pay:

⁸ Section 9(1)

⁹ Section 9(2)

¹⁰ Section 9(3)

¹¹ Section 19 & Part 1 of Schedule

¹² National Minimum Wage Order 2022 - S.I. 500/2022

¹³ Section 19 & Part 2 of Schedule

- Overtime premium,
- Saturday premium, Sunday premium and public holiday premium where any such days are worked,
- Unsocial hours premium,
- Call-out premium,
- On-call or standby allowance,
- Any amount distributed to the employee of tips or gratuities paid into a central fund managed by the employer and paid through the payroll,
- Allowances for special or additional duties including those of a post of responsibility,
- Any payment or reimbursement of expenses incurred by the employee in carrying out his employment including the payment of travel and subsistence rates,
- Any payments to an employee in relation to a period of absence from the workplace, such as sick pay, holiday pay, payment for health and safety leave under the **Maternity Protection Acts 1994 to 2022**, or pay in lieu of notice,
- 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,
- Pension contributions paid by the employer on behalf of the employee,
- Any payment referable to the employee's redundancy,
- The notional value of any benefit in kind, except board and lodgings,
- Any payment to the employee outside of his capacity as an employee,
- Any payment representing compensation to the employee, such as for injury,
- An award made under a staff suggestion scheme,
- Any loan by the employer to the employee.

What this means, for example, is that where an employee is paid more than the normal hourly rate due to working overtime, weekends, on public holidays, etc. and is paid say time and a half (i.e. one and a half times the usual hourly rate), the premium paid (that is the additional 50%) is not included when calculating the average hourly rate of pay.

6.2 Statement of Hourly Rate of Pay

An employee is entitled to a written statement from his employer, detailing his reckonable pay, working hours, average hourly rate of pay and statutory minimum hourly rate of pay entitlement under the Act, in a pay reference period within the past 12 months.¹⁴

The employee must make a written request for this information, in relation to a pay reference period other than the current period. The employer must reply in writing within 4 weeks. The statement must be signed and dated by or on behalf of the employer and a copy kept by the employer for 15 months. If the statement discloses an underpayment, the employer must immediately repay the employee the underpayment. Failure to do so is a criminal offence, and the employer may be liable to a Class C fine not exceeding €2,500.¹⁵

Where an employee is likely to earn on average 150% or more of the national minimum hourly rate of pay (i.e. €16.95), per working hour in the pay reference period, the employer is not obliged under the Act to supply the written statement.

¹⁴ Section 23

¹⁵ Section 23 (1)-(6)

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6.3 Fixed Payment Notice

A Fixed Payment Notice can be issued by an Inspector of the Workplace Relations Commission to an employer who fails to provide a written statement of an employee's average hourly rate of pay. The **Workplace Relations Act 2015 (Fixed Payment Notice) Regulations 2015** confirm that the fine for failing to provide a written statement of an employee's average hourly rate of pay is €1,500. Fixed Payment Notices are dealt with in more detail in the chapter entitled "Introduction to Employment Law".

7. Earnings in Excess of the National Minimum Wage

There is no obligation under the Act on an employer to grant an increase in pay to an employee who is not entitled to an increase in pay under the Act. This may arise where an employer wants to restore the pay differential between one employee and a lower paid employee, who was entitled to an increase in pay under the Act. Neither an Adjudication Officer nor the Labour Court has the power to investigate such claims.

8. Record Keeping

An employer must keep all necessary records to show whether the Act is being complied with, for a period of three years. The onus of proof is on the employer to show that the law has been complied with.¹⁶

9. Criminal Sanction

It is a criminal offence for an employer to pay an employee less than his minimum hourly rate of pay entitlement, or to exceed the period for payment of a rate less than the national minimum hourly rate of pay.¹⁷ This may result on summary conviction in a Class C fine not exceeding €2,500, or in imprisonment for a term not exceeding 6 months, or both.

10. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled "Introduction to Employment Law". An employee must have previously requested a statement of his hourly rate of pay from the employer, before he may make a complaint to the Workplace Relations Commission.¹⁸ The complaint must be made within 6 months of obtaining the written statement or 6 months from the employer's failure to provide the statement. If the dispute relates to a reduction in hours without a reduction in the amount of work, the complaint must be made within 6 months of the date the employee's hours were reduced.

Where the complaint is upheld, an Adjudication Officer may order an employer to:

- Pay arrears of pay owing to an employee under the Act in respect of the period to which the dispute relates,
- Pay the employee's expenses in bringing the claim,
- Rectify any matter which the employer is in contravention of the Act within a specified period or specified manner,
- Any combination of the above.¹⁹

¹⁶ Section 22

¹⁷ Section 35

¹⁸ Section 24

¹⁹ Section 26 as amended by the Workplace Relations Act 2015

Any provision or term in a contract of employment which excludes or limits an employee's entitlements under the **National Minimum Wage Acts 2000 and 2015** is void and cannot be enforced by the employer.

11. Victimisation of an Employee

Dismissal of an employee for exercising his rights under the **National Minimum Wage Acts 2000 and 2015** will be regarded as an unfair dismissal under the **Unfair Dismissals Acts 1977 to 2015**, and the employee will be entitled to the applicable remedies under that Act, namely reinstatement, re-engagement or compensation.²⁰

An employer may not reduce an employee's working hours, without also reducing the employee's duties; otherwise the employee is entitled to an increase in hourly pay under this Act. If the employee is required to do the same work in fewer hours, he is entitled to the same pay, which effectively means an increase in the hourly rate of pay.

12. Employer in Financial Difficulty

An employer in financial difficulty can apply to the Labour Court for a temporary exemption from paying an experienced adult worker the current minimum hourly rate.²¹ This could arise in circumstances where the employer may be forced to terminate the employment or the employee is likely to be laid off, if the employer is compelled to pay this hourly rate. Where more than one employee is involved, the employer must have the consent of the majority of the employees. The agreement of the employees only is not sufficient to pay an employee less than the national minimum wage. The Labour Court will decide if the temporary exemption is granted.

Where an exemption is granted, it cannot be for less than three months, nor can it exceed a period of one year.²² An employer can only be granted one temporary exemption, and the employer may not apply for an exemption in respect of an employee being paid less than the national minimum wage which means that it does not apply to employees under 18 years of age, or those aged 18 or 19 years.

13. Low Pay Commission

The Low Pay Commission was established on a statutory basis on 15th July 2015 following the enactment of the **National Minimum Wage (Low Pay Commission) Act 2015**. The Commission is an independent body with responsibility for recommending any change in the national minimum wage. Prior to the establishment of the Commission the national minimum wage could only be changed by a decision of the Minister or following a recommendation in a national agreement or by the Labour Court.

Under the **National Minimum Wage (Low Pay Commission) Act 2015** the Commission is required to examine the national minimum wage each year and to submit any recommendations to the Minister for Enterprise, Trade and Employment in July each year.

The Commission will consult with relevant interest groups including employers, trade unions and directly with workers who earn the minimum wage, and will consider a range of issues before making a recommendation, including:

²⁰ Section 36

²¹ Section 41(1)

²² Section 41(2)

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- Changes in earning since the last increase,
- Employment and unemployment rates,
- International comparisons, and
- The likely effect that any increase in the minimum wage would have on the levels of employment and unemployment, the cost of living, and national competitiveness.

Within 3 months of receiving a recommendation from the Commission, the Minister will decide to accept, reject or vary the proposed changes to the national minimum wage.

14. Living Wage

Currently the term “living wage” has no legal meaning. In November 2022, the Minister for Enterprise, Trade and Employment announced proposals to replace the national minimum wage with a living wage. This follows the publication of a Report on the Living Wage by the Low Pay Commission which was requested to examine the Programme for Government commitment to “progress to a living wage over the lifetime of the Government” and make recommendations on how best to achieve this commitment.

It is proposed that the living wage will be set at 60% of the national median wage for a given year and it will be phased in over a 4-year period from 2023 to 2026 by increasing the national minimum wage. Based on this calculation, for 2023, the estimated living wage would be €13.10. The first step in the transition is the increase in minimum wage from €10.50 per hour to €11.30 per hour in 2023.

The Low Pay Commission also recommended that:

- The existing national minimum wage youth rates should continue to apply to the living wage,
- There should be no sectoral or regional variations in the living wage,
- Consideration should be given to supporting employers who have a substantial proportion of employees on minimum wage, and
- Once the 60% target has been met, consideration could be given to gradually increasing the threshold to 66% of median wage.

The method of calculating the living wage as outlined above is different to the living wage which is recommended by the Living Wage Technical Group. This group is an independent group which calculates a living wage based on the “cost of a basket of goods” and makes possible a minimum acceptable standard of living. The living wage recommended by this group for 2023 is €13.85.

While some employers choose to pay the living wage to their employees, they are not under any statutory obligation to do so at present.

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Organisation of Working Time Act 1997 - Holidays

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Holiday Entitlements**
 - 4. Calculating Holiday Pay**
 - 5. Public Holidays**
 - 6. Compliance Notice**
-

Note: The Organisation of Working Time Act 1997 is a very detailed piece of legislation. For convenience and clarity, it has been separated under three headings – Holidays, Rest and Working Time and Records and each will be covered in a separate chapter. This chapter deals with an employee's holiday entitlements.

1. Main Provisions

This part of the Organisation of Working Time Act 1997 provides the rules for calculating employees' holiday entitlements and holiday pay including payments due for Public Holidays (commonly known as Bank Holidays). A full-time employee is entitled to 4 working weeks holidays per leave year, which is not necessarily the same as 20 days (5 days x 4 weeks).

2. Covered Employees

The holiday and public holiday provisions in the Act apply to all employees, (whether full-time, part-time, fixed-term or casual) engaged under a contract of employment or apprenticeship, employed through an employment agency or working for the State except:

- Members of the Defence Forces
- Members of An Garda Síochána

In the case of agency workers, the person who pays the wages (the employment agency or client company) is the employer and is responsible for providing the holidays and public holiday entitlements.

3. Holiday Entitlements

There is no qualifying period for holidays and all employees, regardless of status, service or age, begin to accrue holiday entitlements from the day they commence employment.¹ When calculating holiday entitlements, all time worked qualifies for holiday entitlement, including overtime hours worked.

¹ Section 19(1)

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An employee's statutory annual leave entitlement should be calculated based on one of the following methods, depending on the number of hours worked by the employee:

- (i) 4 working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which he, or she, changes employment),
- (ii) 1/3rd of a working week for each month in a leave year in which the employee works at least 117 hours, or
- (iii) 8% of the hours worked by an employee in a leave year (but subject to a maximum of 4 working weeks).

If more than one of these provisions apply to an employee and the results are not the same, the employee is entitled to whichever result is the more advantageous for him. Method 2 equates to 4 working weeks if calculated over a 12 month period.

Example 1 – 4 Working Weeks

Anne works 35 hours over a 5 day week and Barry works 28 hours over a 4 day week. Calculate their statutory annual leave entitlement, assuming they are employed for the full leave year.

Solution 1

As Anne works more than 1,365 hours ($35 \text{ hours} \times 52 \text{ weeks} = 1,820 \text{ hours}$) in the leave year, she is entitled to 4 working weeks' annual leave. This equates to 20 days based on her 5 day working week.

As Barry works more than 1,365 hours ($28 \text{ hours} \times 52 \text{ weeks} = 1,456 \text{ hours}$) in the leave year, he is entitled to 4 working weeks' annual leave. This equates to 16 days based on his 4 day working week.

Note: while an employee is entitled to the most favourable of the 3 options, the other 2 options either equate to, or are subject to, a maximum of, 4 working weeks.

Example 2 – 1/3rd of a working week

Luke and Mary commenced employment on 1st February. Luke works 32 hours over a 4 day week and Mary works 40 hours over a 5 day week. Calculate their statutory annual leave entitlement for February.

Solution 2

As Luke worked in excess of 117 hours in February ($32 \text{ hours} \times 4 \text{ weeks} = 128 \text{ hours}$), his annual leave entitlement can be based on 1/3rd of his working week which results in 1.333 days annual leave or 10.67 hours.

As Mary worked in excess of 117 hours in February ($40 \text{ hours} \times 4 \text{ weeks} = 160 \text{ hours}$), her annual leave entitlement can be based on 1/3rd of her working week which results in 1.67 days annual leave or 13.34 hours.

Method 1 is not applicable as they commenced employment during the leave year and method 3 results in a less favourable entitlement of 10.24 hours ($128 \text{ hours} \times 8\%$) for Luke and 12.8 hours ($160 \text{ hours} \times 8\%$) for Mary.

Example 3 – 8% of hours worked

Susan works 15 hours per week. What method should be used to calculate her annual leave entitlement?

Solution 3

Method 1 is not applicable as Susan will not work in excess of 1,365 hours in the leave year (15 hours x 52 weeks = 780 hours).

Method 2 is not applicable as Susan does not work 117 hours in a month.

Her annual leave should be calculated using method 3 based on 8% of the hours she works. As Susan works a total of 15 hours per week, she would accrue 1.2 hours holidays per week (15 hours x 8%), subject to a maximum of 4 working weeks (i.e. 60 hours) in the leave year.

Example 4

Sara works a 35 hour week over 5 days (7 hours per day) and is entitled to 20 days annual leave. She took 10 days holidays in June and she is due to leave her employment on 31st October. Calculate her holiday entitlement up to the date of her cessation (assume 218 working days in the leave year from 1st January to 31st October).

Solution 4

Sara's holiday entitlement should be calculated by whichever method is more favourable to her.

Method 1 – More than 1,365 hours in a leave year

This method is not applicable as this is a leave year in which Sara changes employment.

Method 2 – 1/3rd of a working week

$5 \text{ days} \times 1/3^{\text{rd}} = 1.67 \text{ days per month} \times 10 \text{ months} = 16.67 \text{ days} \times 7 \text{ hours} = 116.7 \text{ hours}$

Method 3 – 8% of hours worked

$218 \text{ days} \times 7 \text{ hours} = 1,526 \text{ hours} \times 8\% = 122.08 \text{ hours}$

As the 8% rule gives rise to the greater annual leave entitlement, Sara is entitled to 122.08 hours annual leave up to her date of leaving. As she has already taken 2 weeks paid holidays (10 days or 70 hours), she is entitled to the balance of 52.08 hours for which she should be paid when leaving her employment. In practice, many employers may ignore the 8% rule and only use the "1/3rd of a working week rule", and in this example, give the employee 16.67 days (116.7 hours), however this is not correct.

References to a 'working week' refers to the number of days the employee usually works in a week.

An employee who works for 8 or more months in a leave year is entitled to 2 unbroken weeks' annual leave.²

² Section 19(2)

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Example 5

John works for ABC Ltd. He works a 40 hour week over 5 days. He joined the company on 1st January and is entitled to 20 days annual leave per year. He wants to take 10 days annual leave in the first 2 weeks of July. Calculate his annual leave entitlement to 30th June.

Solution 5

Annual leave is calculated on the basis of time worked. Therefore, John's annual leave entitlement will be based on his service from 1st January to 30th June, which is 6 months.

Based on 1/3rd of his working week, his entitlement until the end of June is 10 days (1.67 days x 6 months).

Based on the 8% rule, his entitlement until the end of June is 10.4 days (assume 26 weeks x 40 hours = 1,040 hours x 8% = 83.2 hours / 8 hours per day = 10.4 days).

Using either method, John has accumulated the 10 days which he wishes to take in July.

Strictly speaking he has not yet been employed for 8 months in this leave year, so his employer may refuse to allow him to take the 2 weeks holidays together.

While an employee is entitled to a minimum of 4 working weeks holidays in a leave year, there is nothing to prevent an employer from providing an employee with an annual leave entitlement in excess of 4 working weeks, but this is purely a matter between the employer and the employee. An employee's contract can give **more** than the statutory minimum holidays, e.g. a teacher can receive 3 months, or more, paid holidays in a year. However, any additional holiday entitlements in an employment contract cannot be enforced under this legislation, since this legislation merely specifies the minimum holiday entitlements of an employee.

A part-time employee's annual leave entitlement is calculated in a similar manner as a full-time employee based on whichever of the 3 methods is appropriate, depending on the number of hours worked by the part-time employee.

In practice, an employee who works **regular part-time hours**, e.g. 7 hours per day, 3 days a week, will be entitled to a minimum of 12 days (3 days x 4 weeks) annual leave per year under the Act. On first glance it may appear that the holiday entitlement should be calculated as 8% of the hours worked, as this employee will not exceed 117 hours per month or 1,365 hours per year, but the 8% calculation is subject to a maximum of 4 working weeks per year. If the employee was to commence or leave mid-year, the annual leave calculation may need to be calculated based on 8% of the hours worked in the year of commencement or cessation.

Where a part-time employee works **irregular hours**, annual leave is generally calculated using 8% of hours worked, subject to a maximum of 4 working weeks for that employee.

Example 6

Leah works on a casual basis. She worked 63 hours in January, 48 hours in February and 59 hours in March. She now wishes to take annual leave and has enquired as to what annual leave she is entitled to.

Solution 6

Leah is entitled to 13.6 hours annual leave ($63 + 48 + 59 = 170$ hours x 8%).

As mentioned above, an employee is entitled to 4 working weeks annual leave in a leave year in which he works at least 1,365 hours (*unless it is a leave year in which he or she changes employment*). This phrase “*changes employment*” is not defined in the Act. The use of the word “*changes*” suggests that the employee is moving from one employment to another. In practice, this is interpreted to include a commencement of employment regardless of whether the employee held a previous employment in this leave year or not, and the termination of an employment, regardless of whether the employee is moving to a new employment or not.

Example 7

ABC Ltd operates an annual leave year of January to December. Helen commenced employment with ABC Ltd at the beginning of May. She works 40 hours over a 5 day week. Her annual holiday entitlement is 20 days. Calculate her holiday entitlement from May to December (35 weeks).

Solution 7

Even though Helen has only worked for 8 months she has worked more than 1,365 hours (40 hours x 35 weeks = 1,400) from May to December. However, as this is a leave year in which Helen changes employment, she is entitled to 1/3rd of a week (1.67 days) for 8 months giving an entitlement of 13.36 days (1.67 days x 8 months) from May to December.

If an employee is sick during his holidays and can produce a medical certificate, the sick day, or days are not included in his annual leave. In other words, the employee is entitled to additional leave to compensate him where he becomes sick when absent on holiday leave.³

Example 8

Mike was absent on 10 days annual leave. On the seventh day of his holidays, he had an accident and was certified by his doctor as being unable to work for 3 weeks. What impact does this have on his annual leave?

Solution 8

As 4 days of Mike’s annual leave is covered by a medical certificate, these 4 days are sick leave, not annual leave. Hence, Mike has only taken 6 days annual leave.

3.1 What Counts as Time Worked when Calculating Annual Leave?

All hours worked, including overtime, are included when calculating time worked for holiday leave entitlements.

An employee is regarded as having worked on a day of annual leave or on a public holiday, the hours he would have worked on that day, if it had been a normal workday. Credit must be given for these hours, by the employer, when calculating hours worked.⁴ Where a public holiday falls on a day the employee is not scheduled to work, this is not considered as time worked.

In addition, time spent on maternity leave, additional maternity leave, adoptive leave, additional adoptive leave, paternity leave, parental leave, force majeure leave, certified sick leave and the first 13 weeks of carer’s leave is considered as time worked for the purpose of accruing statutory annual leave entitlements.

³ Section 19(2)

⁴ Section 19(5)

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Example 9

Paul works part-time in a hotel, 4 hours per day for 5 days a week (i.e. 20 hours per week). He is entitled to 20 days (80 hours) annual leave per year. He occasionally works additional overtime hours. In the first 6 months of this leave year he works the following number of hours:

January	120 hours	April	125 hours
February	110 hours	May	140 hours
March	90 hours	June	140 hours

He took 2 weeks annual leave (40 hours) in March. Calculate his holiday entitlement at the end of June.

Solution 9

Annual leave is calculated based on all hours worked, and time spent on annual leave qualifies as time worked for the purpose of calculating his holiday entitlements. Therefore, Paul's annual leave entitlement will be based on his service from 1st January to 30th June, which is 6 months.

For the months in which he works at least 117 hours per month he is entitled to 1/3rd of a working week for each month. However, if his holiday entitlement is calculated based on 8% of hours worked and this method is more favourable, Paul is entitled to the greater period of leave. Therefore, both methods must be calculated. Even though he only worked 90 hours in March he is deemed to have worked 130 hours ($90 + (2 \times 20)$) as the time spent on annual leave is also taken into account. His holiday entitlement is calculated as follows:

	Jan	Feb	Mar	Apr	May	June
Hours worked	120	110	130	125	140	140
1/3rd of a working week	1.67	N/A	1.67	1.67	1.67	1.67
Converted into hours (1.67 x 4hrs)	6.68	N/A	6.68	6.68	6.68	6.68
8% of hours worked	9.60	8.80	10.40	10.00	11.20	11.20
Employee is entitled to greater	9.60	8.80	10.40	10.00	11.20	11.20

Method 2 results in the greater annual leave entitlement for each month, giving a total of 61.2 hours.

Summary

Total annual leave entitlement to the end of June	61.20 hours
Less 10 days leave already taken	(40.00) hours
Balance of annual leave remaining	21.20 hours or 5.3 days

Paul's holiday entitlement for the first 6 months is 15.30 days (61.2 hours / 4 hour day). If Paul continues to work such hours for the rest of the year, he will soon reach his maximum entitlement of 4 working weeks i.e. 80 hours (20 hours x 4 weeks). However, no matter how many hours he works, he cannot accrue any additional holiday entitlements in excess of 4 working weeks, unless it is provided for in his contract of employment.

Faced with this situation in practice, many employers may simply calculate this employee's annual leave based on 1/3rd of a working week for each calendar month, which would result in 10 days leave (5 days x 1/3rd = 1.67 days per month x 6 months). This is not correct.

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It should be noted, that where an employee regularly works in excess of his contractual working hours, it could be argued that these additional hours form part of the employee's normal working week and hence should be taken into account when calculating his statutory holiday entitlement

Example 10

Peter works a 35 hour week (5 days per week). He took 2 weeks (10 days) holidays at the beginning of August, and he received a paid day off on 7 public holidays between January and August. He was absent on certified sick leave for 15 weeks from mid-August to the end of November due to a broken leg. As the Christmas break approaches, Peter wants to know what annual leave he is entitled to, as he wants to take the balance of his statutory annual leave over Christmas.

Solution 10

As Peter's certified sick leave and time spent on annual leave is deemed to be time worked for the purpose of accruing annual leave, Peter's annual leave entitlement is calculated as follows:

<i>Actual hours worked:</i>	$33.6 \text{ weeks} \times 35 \text{ hours} = 1,176 \text{ hours}$	
<i>Deemed hours of work:</i>		
Annual leave	$2 \text{ weeks} \times 35 \text{ hours} =$	70 hours
7 Public holidays	$7 \text{ days} \times 7 \text{ hours} =$	49 hours
Certified sick leave	$15 \text{ weeks} \times 35 \text{ hours} =$	<u>525</u> hours
<i>Total</i>	52 weeks	1,820 hours

*52 weeks less 15 weeks sick leave, 2 weeks annual leave and 7 public holidays (1.4 weeks).

Although Peter's actual working hours do not exceed 1,365 per year, when his hours spent on annual leave, public holidays and certified sick leave are included, his working hours exceed 1,365 hours in a leave year and he is therefore entitled to 4 weeks annual leave. As Peter has already taken 10 days holidays, he is due the balance of 10 days.

Example 11

Mary works 32 hours per week over 4 days. Under her contract of employment, Mary is entitled to 22 days holidays per year. This is 6 days in excess of her statutory entitlement of 4 working weeks (16 days). Mary worked for 39 weeks from January to September and she was absent on certified sick leave for 13 weeks from October to December. Calculate her statutory annual leave entitlement.

Solution 11

As Mary's total hours for the purposes of accruing annual leave (actual hours worked plus her certified sick leave) is 1,664 hours (39 weeks x 32 hours plus 13 weeks x 32 hours), she retains her statutory annual leave entitlement of 4 working weeks (16 days).

It is likely that Mary would also have a pro-rata entitlement to the additional 6 days (e.g. 6 days x 39/52 weeks = 4.5 days). This would give to a total of 20.5 days annual leave. However, as this excess amount is not covered under the Act, the entitlement to these additional days of annual leave should be clearly set out in the employee's terms of employment to avoid any confusion.

3.2 Holiday entitlement and change in working hours

On occasion, an employer may be forced to reduce his employees' working hours by putting them on a 3 or 4 day week, which may affect their annual leave entitlement. Where an employee's

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hours of work have been reduced he will accrue annual leave based on actual hours worked. Where an employee is put on temporary short-time or temporary lay-off, his holiday entitlements are calculated based on the temporary working hours. References in the Act to a working week mean the number of days that the employee concerned normally works in a week. Where an employee's working week changes mid-year, the annual leave calculation should be split based on the changes in working hours during the year. This is illustrated in the following examples.

Example 12

Elaine works a 35 hour week (7 hours per day) and she is entitled to 20 days (4 working weeks) annual leave. She took 2 weeks annual leave in June. Her employer advised her that she was being put on a 3 day week with effect from 1st September. Calculate her annual leave entitlement at the end of December.

Solution 12

Annual leave is calculated based on time worked and time spent on annual leave is deemed to be time worked for the purpose of calculating holiday entitlements. Elaine's annual leave entitlement will be based on her service from 1st January to 31st August, which is 8 months based on a 5 day week and from 1st September to 31st December based on a 3 day week. Her annual leave entitlement is calculated as 1.67 days per month from 1st January to 31st August. Because she works a 3 day week from 1st September and works less than 117 hours per month (7 hours x 3 days x 4 weeks = 84 hours) her annual leave entitlement for this period is calculated as 8% of the hours worked.

Ist January to 31st August	8 months x 1.67 days per month =	<u>13.36 days</u>
Converted into hours:	13.36 days x 7 hours =	93.52 hours

September	7 hours x 3 days x 4 weeks =	84 hours @ 8% =	6.72 hours
October	7 hours x 3 days x 5 weeks =	105 hours @ 8% =	8.40 hours
November	7 hours x 3 days x 4 weeks =	84 hours @ 8% =	6.72 hours
December	7 hours x 3 days x 4 weeks =	84 hours @ 8% =	<u>6.72 hours</u>
Total hours of annual leave entitlement			<u>122.08 hours</u>

Converted into days (total holiday hours / 7 hour working day)	<u>17.44 days</u>
Less holidays already taken	(10 days)
Balance of leave left	<u>7.44 days</u>

Alternatively, Elaine's annual leave entitlement could be calculated based on 8% of hours worked for the full year.

Ist January to 31st August	35 weeks x 35 hours =	1,225 hours
1,225 hours x 8% =		98 hours
98 hours / 7 hours =		14 days

September to December (as calculated above)	<u>4.08 days</u>
6.72 + 8.4 + 6.72 + 6.72 = 28.56 hours / 7 hours =	<u>18.08 days</u>
Less holidays already taken	(10 days)
Balance of leave left	<u>8.08 days</u>

As the 8% method is the most advantageous to Elaine, this is the method which should be used by her employer.

Example 13

Sheila has been employed by your company for the past 4 years, working a 35 hour week (7 hours per day). She is entitled to 20 days (4 working weeks) holidays per year. Sheila has been on maternity leave and is due to return to work on 1st July. She has requested and has been granted a 3 day week (21 hours per week) when she returns. Sheila is unsure how many holidays she will have and has asked you to calculate her entitlement for the current year and for next year.

Solution 13

Sheila is entitled to accrue annual leave while on maternity leave based on a 5 day week. From 1st July to 31st December her working week changes and therefore her total hours worked for the purposes of calculating her holiday entitlement from January to December is as follows:

1st January – 30th June

$$\begin{array}{ll} 6 \text{ months} \times 1.67 \text{ days} = & 10 \text{ days, or} \\ 26 \text{ weeks} \times 35 \text{ hours} \times 8\% = 72.80 \text{ hours} / 7 \text{ hour day} = & 10.4 \text{ days} \end{array}$$

1st July – 31st December

$$\begin{array}{ll} 26 \text{ weeks} \times 21 \text{ hours} = 546 \text{ hours} & \\ 546 \text{ hours} \times 8\% = 43.68 / 7 \text{ hours} & \underline{6.24 \text{ days}} \\ \text{Total days using method most favourable to the employee} & 16.64 \text{ days} \end{array}$$

In practice, many employees would be allocated 16 days annual leave in this situation (10 days for the first 6 months which is half of the 20 days annual entitlement based on a 5 day week, and 6 days for the remaining 6 months which is half of the 12 days annual entitlement based on a 3 day week). However, the employee may be entitled to a minimum of 16.64 days.

For next year Sheila will work 21 hours per week for 52 weeks (i.e. 1,092 hours). Her annual leave entitlement will be calculated as 8% of hours worked as she will work less than 117 hours per month i.e. 1,092 hours @ 8% = 87.36 hours / 7 hours per day = 12.48 days. However, no matter how many hours she works, she cannot accrue any additional holiday entitlements in excess of 4 working weeks and therefore is only entitled to 12 days holidays (3 days per week x 4 weeks).

3.3 Timing of Annual Leave

The Act provides that the employer decides when an employee can take annual leave having regard to the requirements of the job and subject to:⁵

- (a) The employer taking into account:
 - The need for the employee to reconcile work and family responsibilities e.g. school holidays, partner's holidays, etc.
 - The opportunities for rest and recreation available to the employee.
- (b) The employer having consulted with the employee, or his trade union, at least 1 month before the leave is due to commence
- (c) The leave being granted:

⁵ Section 20(1)

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- (i) Within the leave year to which it relates, or
- (ii) Within 6 months following the end of that leave year, with the consent of the employee, or
- (iii) Within 15 months following the end of that leave year in which it was accrued, where the employee is, **due to illness**, unable to take all or part of his annual leave during that leave year or within 6 months following the end of that leave year, **and** he has provided a medical certificate in respect of the illness to his employer.

The Act provides that the employer decides when annual leave is to be granted to an employee, subject to the above requirements, for example 2 weeks annual leave is granted in the last 2 weeks in July in the construction industry. Other employers take a more flexible approach and will try and accommodate requests for annual leave made by each employee. However, it is recommended that employers have a clear policy outlined in their staff handbook (contract of employment) in relation to the application and granting of annual leave. A clear policy helps employers avoid situations where too many employees are on annual leave at any one time leading to difficulties in covering workloads, or where an employee does not take his statutory annual leave entitlement within the specified time periods. The policy should outline how requests for annual leave are prioritised (e.g. first come/first served, seniority, length of service, etc.) where multiple requests for annual leave are received in respect of the same days.

It is the employer's responsibility to ensure that every employee takes his full statutory annual leave entitlement within the specified time period as outlined above. Otherwise, an employee can make a complaint to the WRC.

Note: An employee accrues annual leave while absent on certified sick leave. If he does not return to work within 15 months following the end of the leave year in which it was accrued, he will subsequently lose that entitlement as the maximum carry over period is 15 months.

Example 14

Niall works 37 hours per week over 5 days. He is entitled to 20 days holidays per year. Niall was involved in a serious car accident and is absent on certified sick leave from 1st September 2023. He is expected to return work in May 2025. Niall has already taken 15 days annual leave in 2023 prior to his accident.

Calculate Niall's holiday entitlement for 2023 and 2024 and state the latest period that he should be granted his annual leave by his employer, assuming his employer's annual leave year runs from January to December.

Solution 14

As Niall's sick leave has been certified, he is deemed to be at work performing his duties of employment and will accrue annual leave for the duration of his absence.

For 2023, Niall will accrue 20 days annual leave. As he has already taken 15 days, the maximum carry over period for taking the outstanding 5 days is 15 months following the end of 2023 (i.e. Niall will have up until 31st March 2025 to take this leave). If Niall does not return to work until May 2025, he will lose his entitlement to the remaining 5 days annual leave from 2023.

In 2024, Niall will also accrue his full annual leave entitlement of 20 days. The latest period that he should be granted this leave is 31st March 2026.

3.4 Leave Year

The leave year in the Act runs from the 1st April to 31st March.⁶ However, in practice many employers use other administrative leave years (e.g. the calendar year or Financial Accounting year). If an employer uses a leave year other than 1st April to 31st March, it should be used consistently. While employers may operate a leave year other than the statutory leave year, if an employee makes a complaint to the Workplace Relations Commission (WRC) that he has not been provided with his correct annual leave entitlement, the WRC will reference the claim to the statutory leave year (i.e. 1st April to 31st March), even if the employer uses the leave year from January to December or any other leave year.

DWT0963 – Waterford City Council and Stephen O’Donoghue

This case was an appeal by the union of a Rights Commissioner’s decision which found that the employee had received his proper annual leave entitlements under the Organisation of Working Time Act 1997. The case arose due to the employer changing its leave year from April – March to January – December. All employees were allocated a pro-rata entitlement for the 9 month period from April 2007 to December 2007, which according to the employer did not reduce any employee’s annual leave entitlements. The employee was allocated 17.25 days annual leave, being 75% of the full allocation of 23 days per year. The union argued that the employer had essentially introduced a 9 month leave year from April to December 2007, and as the employee had worked more than 1,365 hours in the 9 month period, he was entitled to his full annual entitlement of 23 days.

In its determination, the Labour Court stated:

- *The definition of a leave year in the Act refers to a year i.e. a period of 12 months, hence the 9 month period was not capable of constituting a leave year.*
- *The full statutory entitlement accrues to an employee in respect of a leave year in which he or she works at least 1,365 hours – the entitlement relates to a year and not a shorter period.*
- *“The only leave year which is cognisable for the purpose of determining if an employee received his or her statutory entitlement is that prescribed by the Act itself, that is to say, a year starting on 1st April and ending on 31st March the following year. While different arrangements may be put in place for administrative purposes, in determining if a contravention of the Act occurred that Court can only have regard to the leave allocated to an employee in the statutory period”. As a result, the employee’s claim can only succeed if it is shown that in the period from 1st April 2007 to 31st March 2008 that he was allocated less than 20 days annual leave. (Note: claims under the Act can only be made in respect of an employee’s statutory entitlement, which does not include any more favourable annual leave granted by the employer).*
- *The Labour Court found that while the change in the leave year was an administrative arrangement, the employee would still accrue 20 days annual leave in the 12 month period from 1st April to 31st March, hence there is no evidence that a breach of the Act occurred.*
- *The Labour Court also noted as the claim was presented in January 2008, it could only relate to the leave year 2007 – 2008. Where an employee is allocated less than his or her statutory entitlement of annual leave in a leave year, a contravention of the Act occurs at the end of the leave year to which it relates. The Court cannot see how a valid complaint could be referred to a Rights Commissioner in January 2008 in respect of an alleged contravention of the Act which could only have crystallised two months later at the end March 2008.*

The examples in this text are based on a leave year of 1st January to 31st December.

⁶ Section 2(1)

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4. Calculating Holiday Pay

The Organisation of Working Time (Determination of Pay for Holidays) Regulations 1997⁷ sets out the methods for calculating:

- The normal daily/weekly rate of an employee's pay for holiday pay, and
- The appropriate daily rate of an employee's pay for public holidays.

The method of calculating the normal weekly rate of pay for holiday pay is as follows:

- If the employee's pay is calculated purely on the basis of a rate per hour, per day, etc., or on a fixed rate, or salary, or any other rate that **does not vary** according to the work done by him, the normal weekly rate shall be the sum (including any regular bonus or allowance but **excluding pay for overtime**) that is paid to the employee in respect of the normal weekly working hours last worked by him before annual leave commences (or employment ceases). In other words, an employee is entitled to an average week's wages, **excluding pay for overtime**.

If the employee's pay is not calculated as above, the normal weekly rate of pay shall be the average weekly pay (excluding pay for overtime) calculated over the period of:

- 13 weeks ending immediately before the annual leave commences (or employment ceases), or
- If no time was worked by the employee during that period, over the period of 13 weeks ending on the day that was last worked by the employee, before annual leave commences (or employment ceases).

This rate of calculation applies where employees (e.g. sales reps., telesales employees, etc.) are paid a basic salary and a variable commission; thus an average of the commission paid in the previous 13 weeks is paid as part of the holiday pay.

Example 15

Paul works 40 hours per week and is paid €15 per hour. He is taking 2 weeks holidays in August. Calculate his holiday pay.

Solution 15

As Paul's wages are calculated based on a rate per hour, the normal weekly rate for his holiday pay is the sum that is paid to him in respect of the normal weekly working hours last worked by him before his annual leave commences. Paul's holiday pay is calculated at his normal weekly rate of pay of €600 (i.e. 40 hours x €15). For 2 weeks holidays, he should receive holiday pay of €1,200 in total.

Example 16

Ann works 36 hours per week and is paid €18 per hour. When she works overtime, she gets paid an overtime rate of €24 per hour. Over the past number of weeks she worked the following hours:

Week 1:	36 hours	Week 2:	36 hours
Week 3:	38 hours	Week 4:	40 hours
Week 5:	42 hours	Week 6:	36 hours
Week 7:	Annual Leave	Week 8:	Annual Leave

Calculate Ann's holiday pay for the two weeks.

⁷ Statutory Instrument No. 475 of 1997

Solution 16

When calculating holiday pay, pay for working overtime is excluded. Therefore, Ann's holiday pay is calculated as her normal week's wages excluding pay for overtime i.e. (36 hours x €18 per hour = €648 per week x 2 weeks = €1,296).

Example 17

Andy is a salesperson and is paid a basic salary of €200 per week plus commission which varies depending on his sales. His total pay over the past number of weeks was as follows:

Week 1:	€250	Week 5:	€450	Week 9:	€475	Week 13:	€250
Week 2:	€200	Week 6:	€375	Week 10:	€495	Week 14:	€345
Week 3:	€200	Week 7:	€200	Week 11:	€445	Week 15:	Annual leave
Week 4:	€225	Week 8:	€295	Week 12:	€520	Week 16:	Annual leave

Calculate his holiday pay for week 15 and 16.

Solution 17

As Andy is not paid a fixed salary, his holiday pay is calculated based on his average weekly pay over the period of 13 weeks ending immediately before the annual leave commences as follows:

Weeks 2 to 14 = €4,475 / 13 weeks = €344.23.

Therefore, his holiday pay for the two weeks is: €344.23 x 2 weeks = €688.46

4.1 Payment of Holiday Pay

In accordance with the Act, holiday pay should be paid to an employee **in advance** of the annual leave being taken. In practice, many employers pay holiday pay as part of the employee's normal pay cycle when employees are on annual leave (i.e. employees receive the same pay each pay period regardless of whether they are on annual leave or not). Even though this practice may be agreed by, and suit, both the employer and employee, it is in contravention of the Act. If an employee were to make a complaint that he did not receive his holiday pay in advance, it is likely to be upheld by the WRC as illustrated by the following case.

Case Law: An Employee v An Employer ADJ - 00014935

The employee sought payment in advance for annual leave as he was attending a family wedding. The employer stated that their payroll system was monthly based and paid in arrears. Advance payments were not easily catered for in the system and would involve a complicated system of manual interventions.

The employer stated that this system had been in place for many years and there had been no issues with any other employee. To change the system would be an unreasonable imposition on the employer for what would be in essence, an individual complaint.

The Adjudication Officer found that the complaint was well founded as the Act is clear in stating that holiday pay shall be paid in advance. The employer was instructed to put in steps to comply with the Act, either by adjusting the payroll software or by a suitable manual accounting procedure. As the employee suffered no financial loss, he did not award any compensation.

Some employers pay holiday pay on top of the employee's normal wages each pay period as it accrues by paying the employee 108% of their wages (i.e. 100% of the wages earned plus 8%

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holiday pay). This practice is sometimes referred to as “rolled-up” holiday pay and is more common where employees are employed on a part-time or casual basis. Certain public sector employees were also paid 108% of their pay in lieu of being paid holiday pay separately. This practice has now ceased in the public service where the 8% has been removed from the normal periodical payment, with holiday pay now being paid at certain times of the year when annual leave is taken, such as Easter, Summer and Christmas in compliance with the OWT.

Both the Labour Court and the WRC have ruled that the practice of rolled-up holiday pay is not consistent with Article 7 of the EU Working Time Directive 93/104/EC which states that “*The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated*”.

Case Law: A Former Tutor v An Education and Training Board (ADJ-00025369)

The employee was employed as a tutor and worked about 8 hours per week. She stated that the employer did not pay her correct annual leave and public holiday entitlements among other complaints. The employer stated that the tutor was paid an hourly rate of €45.44 which comprised a basic rate of €39.99 plus €5.45 for holiday pay and was in accordance with Circular 0041/2019 issued by the Department of Education.

The Adjudication Officer referenced the case of Kvaerner Cementation (Ireland) Limited v Martin Treacy DWT017 where the Labour Court decided that “the inclusion of an element in basic pay designed to cover holiday pay is inconsistent with the result which Article 7 of the Directive and Part III of the Act is intended to achieve.

The Adjudication Officer found the complaint to be well founded and that “the payment of an allowance in lieu of statutory annual leave entitlements is not acceptable under the Act”. The Adjudication Officer found that the employee was owed 15.36 hours in respect of annual leave and additional pay in respect of a public holiday which was to be paid at the rate of €45.44 per hour.

It should be noted that where an employee receives holiday pay, he should be granted a PRSI contribution week in respect of each week of holiday pay received. If this does not happen, the employee may suffer a loss of Department of Social Protection (DSP) benefits due to having an incorrect PRSI record. The payment of rolled-up holiday pay may also result in an overpayment of PRSI where the employee and/or employer may have been liable to pay a lesser amount of PRSI if the holiday pay had not been included in the employee’s wages.

It is illegal to pay an employee in lieu of any part of his statutory annual leave entitlement unless the employment has ceased. If an employee had a contractual entitlement to 5 weeks’ holidays and had taken his statutory entitlement of 4 weeks, that employee could accept payment in lieu of his additional holiday entitlement of 1 week.

As outlined in the **Payment of Wages Act 1991** chapter, there is no requirement for holiday pay to be separately identified on a payslip, however it may be good practice to do so.

4.2 Compensation on Cessation of Employment

Where an employee ceases to be employed, an employer must compensate him at his normal daily/weekly rate in respect of any outstanding annual leave accrued up to the date of cessation, as follows:

- Where the cessation occurs during the first 6 months of a leave year, he is entitled to be compensated for any outstanding holiday pay accrued in that leave year and the preceding leave year; or
- Where the cessation occurs during the second 6 month period of a leave year, he is entitled to be compensated for any outstanding holiday pay accrued in that leave year only; or

Where an employee ceases employment following a period of certified illness and was unable to avail of his statutory holiday entitlement:

- If the cessation occurs within the first 12 months of the 15 month carry over period, he is entitled to be compensated for any outstanding holiday pay accrued in that leave year and the preceding leave year; or
- If the cessation occurs during the final 3 months of the 15 month carry over period, he is entitled to be compensated for any outstanding holiday pay accrued in that leave year and the preceding 2 leave years.

These rules ensure that the employee is compensated for the annual leave which he would have been entitled to take, had he remained in employment.

Example 18

Colm was absent on certified sick leave from September 2022 to March 2025. If Colm was to leave his employment during his certified sick leave, the following table shows how he should be compensated for any accrued annual leave not yet taken, assuming his employer's annual leave year runs from January to December.

Solution 18

<i>Where Leave Date occurs:</i>	<i>Compensation</i>
<i>Anytime during 2023</i>	<i>Compensated for his annual leave accrued in 2022 and 2023 up to his leave date.</i>
<i>1st January to 31st March 2024*</i>	<i>Compensated for his annual leave accrued in 2022, 2023 and 2024 up to his leave date.</i>
<i>*After 31st March 2024</i>	<i>Colm loses his entitlement to annual leave accrued in 2022.</i>
<i>1st April 2024 to 31st December 2024</i>	<i>Compensated for annual leave accrued in 2023 and 2024 up to his leave date.</i>
<i>1st January to 31st March 2025</i>	<i>Compensated for annual leave accrued in 2023, 2024 and 2025 up to his leave date.</i>

5. Public Holidays

There are 10 public holidays (commonly called Bank Holidays) listed in the **Organisation of Working Time Act 1997** are:⁸

- New Year's Day – 1st January
- Imbolc – First Monday in February*
- St Patrick's Day – 17th March
- Easter Monday
- First Monday in May
- First Monday in June

⁸ Schedule 2

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- First Monday in August
- Last Monday in October
- Christmas Day – 25th December
- St Stephen’s Day – 26th December

*A new public holiday commences in 2023. This is the first Monday in February except where 1st February falls on a Friday, in which case the public holiday will fall on 1st February (i.e. on the Friday). 2030 will be the first year that the public holiday falls on a Friday.

Good Friday, Christmas Eve and New Year’s Eve are not public holidays and are counted as annual leave if an employee does not work on any of these days. The phrase ‘bank holiday’ has no legal meaning. Where a public holiday falls on a Saturday or Sunday, the public holiday remains on that day, i.e. it does not change to the following Monday.

5.1 Public Holiday Benefits

An employee is entitled to his employer’s choice of the following, in respect of a public holiday:

- A paid day off on that day, or
- A paid day off within a month of that day, or
- An additional day of annual leave, or
- An additional day’s pay.

Not later than 21 days before the public holiday, an employee can request his employer to make a decision regarding which public holiday benefit will be given, and the employer must notify the employee of his decision not later than 14 days before the public holiday. If the employer fails to comply with this request, the employee is entitled to a paid day off on the public holiday, or where the public holiday falls on a day that the employee would otherwise be absent on paid leave, the employee is entitled to an additional day’s pay.

Full-time employees are immediately entitled to a public holiday benefit, which means that if a full-time employee commences employment on a Friday and the subsequent Monday is a public holiday, that employee will be entitled to a full public holiday benefit for the public holiday.

Part-time/casual employees must have worked at least 40 hours in the 5 weeks ending on the day before the public holiday to qualify for the public holiday benefit. Part-time employees, who have not worked at least 40 hours in the 5 week period immediately preceding a public holiday, are not entitled to a public holiday benefit in respect of that day.

Where a public holiday falls on a day on which the employee normally works, or is normally scheduled to work, then:

- A full-time employee is entitled to one of the public holiday benefits listed above,
- A part-time employee must have satisfied the above condition of having worked 40 hours in the previous 5 weeks to be entitled to one of the public holiday benefits listed.

Where a public holiday falls on a day on which an employee is normally off work, or is not scheduled to work, then:

- A full-time employee is entitled to a public holiday benefit equal to 1/5th of his normal weekly pay in respect of the normal weekly hours last worked by the employee before that public holiday,
- A part-time employee is also entitled to a public holiday benefit equal to 1/5th of his normal weekly pay assuming he has worked 40 hours or more in the previous 5 weeks.

Where an employee works 6 days per week and a public holiday falls on a day which he is normally scheduled to work, he is entitled to one of the benefits listed. Where the public holiday falls on the day on which he is not normally required to work, he is still only entitled to 1/5th of his normal weekly pay, provided that the amount does not exceed the amount that the employee would have been paid if it was a day he normally worked.

Where an employee ceases to be employed at any time during the week ending on the day before a public holiday (i.e. in the 7 day period immediately preceding the public holiday), **and** the employee has worked for his employer **during the previous 4 weeks**, the employee is entitled to be paid a public holiday entitlement for the public holiday, calculated at the appropriate daily rate. A part-time employee must also have satisfied the condition of having worked 40 hours in the preceding 5 week period ending on the day before the public holiday.

5.2 Payment for Public Holidays

The **Organisation of Working Time (Determination of Pay for Holidays) Regulations 1997⁹** sets out the method for calculating the appropriate daily rate of an employee's pay for public holidays. Where an employee works, or is normally required to work on a public holiday, the daily rate is calculated as follows:

5.2(a) Public Holiday falling on a day on which the employee normally works

Where a public holiday falls on a day which a full-time employee normally works, he is automatically entitled to one of the benefits listed. A part-time employee is required to have worked an aggregate of 40 hours in the previous 5 weeks to be entitled to a public holiday benefit.

The daily rate of pay is calculated using one of the following methods:

- If the employee's pay is calculated wholly by reference to a time rate, or a fixed rate, or salary, or any other rate that **does not vary** in relation to the work done by him, the normal daily rate shall be the sum (including any regular bonus or allowance but **excluding pay for overtime**) that is paid in respect of the **normal daily working hours** last worked by him before the public holiday commences.
- If the employee's pay is not calculated as above, the normal daily rate of pay is the average daily pay (**excluding pay for overtime**) calculated over:
 - The period of 13 weeks ending immediately before that public holiday, or
 - If no time was worked by him during that period, the period of 13 weeks ending on the day that was last worked by him before that public holiday.

Example 19

Mary works full-time, 40 hours per week (i.e. 8 hours per day, Monday to Friday), earning €14 per hour. Mary's employer closes on a public holiday where it falls on a week day. What is Mary's entitlement in respect of such a public holiday?

⁹ Statutory Instrument No. 475 of 1997

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Solution 19

As Mary is a full-time employee, she has an automatic entitlement to a public holiday benefit. Mary is entitled to the employer's choice of one of the public holiday benefits listed above. This would most likely be a paid day off on the day of the public holiday, which would amount to her normal daily rate of €112 (8 hours x €14).

Example 20

Margaret commenced a part-time employment on 10th March and worked 25 hours prior to St. Patricks Day, 17th March. She wishes to know what her public holiday entitlement is in relation to St. Patrick's Day. Margaret is paid €15 per hour.

Solution 20

As Margaret works on a part-time basis, she is required to have worked at least 40 hours in the 5 week period ending on the day before the public holiday to be entitled to the public holiday benefit. As Margaret has not met this condition, she has no public holiday entitlement in respect of St. Patrick's Day.

Example 21

Paula works part-time, 20 hours per week (i.e. 4 hours per day, Monday to Friday) earning €12 per hour. Her employer has requested her to work for 8 hours on a public holiday which falls on a Monday. How should she be rewarded?

Solution 21

As Paula is a part-time employee, she is required to have worked a minimum of 40 hours in the previous 5 weeks to be entitled to a public holiday benefit. As she works 20 hours a week, she will meet this requirement (20 hours x 5 weeks = 100 hours). Paula is entitled to the employer's choice of one of the public holiday benefits listed above (other than a paid day off on the day as she is required to work), which is equivalent to her normal day of 4 hours. Her normal daily rate is calculated as €48 (4 hours x €12 per hour). In addition, Paula should be paid by her employer for the hours she actually works.

In summary, Paula is entitled to a minimum of €96 (8 hours pay at €12 per hour as payment for the hours actually worked), plus the employer's choice of one of the following:

- A paid day (4 hours) off within a month, or
- An additional day (4 hours) of annual leave, or
- An additional days' pay (i.e. a normal day's pay is €48).

Many people incorrectly assume that all hours worked on a public holiday should be paid at double time (twice the normal rate of pay). There is no specific provision in legislation for the payment of double time when an employee works on a public holiday. The confusion may arise because an employee is entitled to be paid for the hours actually worked and, in addition, he may be paid an additional day's pay in respect of his public holiday benefit, which creates the impression of double time. Alternatively, the employer may offer the employee a paid day off within a month or an additional day of annual leave in respect of the public holiday entitlement. The law provides for a statutory minimum public holiday entitlement. There is nothing to prevent employers offering more favourable terms.

5.2(b) Public Holiday falling on a day on which the employee does not normally work

Where a public holiday falls on a day, which the employee would not normally work, an employee's daily rate is calculated as follows:

- 1/5th of a normal weekly rate including any regular bonus or allowance, but **excluding overtime**, paid in respect of the normal weekly hours last worked by him before the public holiday. This applies where the employee's pay is calculated wholly by reference to a time rate, or a fixed rate, or salary, or any other rate that does not vary in relation to the work done by him.
- Where the employee's pay does vary, the relevant rate of pay for a public holiday is 1/5th of the average weekly pay (**excluding pay for overtime**) but subject to a maximum of a normal day's pay calculated over:
 - (i) The period of 13 weeks ending immediately before that public holiday, or
 - (ii) If no time was worked by him during that period, the period of 13 weeks ending on the day that was last worked by him before that public holiday.

Example 22

Jack works full-time, 40 hours per week (i.e. 8 hours per day, Monday to Friday), and earns €500 per week. What is Jack's entitlement in respect of a public holiday, when it falls on a Saturday or Sunday?

Solution 22

As Jack is a full-time employee, he has an automatic entitlement to a public holiday benefit. As the public holiday falls on a day which he is not normally required to work, his daily rate of pay is calculated as 1/5th of his normal weekly rate of pay. This entitlement is the equivalent of 1 day's paid leave (1/5th of 5 days = 1 day), which amounts to €100. As Jack cannot receive a paid day off on the day, he is entitled to the employer's choice of any of the other 3 public holiday benefits listed above. The most likely scenario is that Jack will receive a paid day off on the Monday following the public holiday i.e. a paid day off within a month.

Example 23

Peter works a 3 day week, from Monday to Wednesday inclusive each week. What is his public holiday entitlement, when a public holiday falls on a Monday, assuming Peter works 7 hours per day?

Solution 23

If Peter is scheduled to work on a Monday and a public holiday falls on that day, he is entitled to a public holiday entitlement, i.e. he is entitled to a paid day off on that day, a paid day off within a month of that day, an additional day of annual leave or an additional day's pay, assuming he has worked 40 hours or more in the previous 5 weeks. The fact that he does not work a full week is irrelevant, when the public holiday falls on a day on which he was scheduled to work.

Example 24

Mary works a 3 day week (Tuesday to Thursday) for 7 hours each day. Mary normally earns €315 per week (3 days x 7 hours x €15 per hour). What is her public holiday entitlement, when a public holiday falls on a Monday?

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Solution 24

As Mary is not scheduled to work on the day on which the public holiday falls, she is entitled to 1/5th of her normal weekly rate of pay for the public holiday, assuming she has worked 40 hours or more in the previous 5 weeks. Since she works a 3 day week, Mary will be entitled to an additional 1/5th of the normal weekly payment she receives, in respect of her public holiday benefit i.e. Mary will be entitled to an additional €63 (€315 x 1/5th) in a week when a public holiday falls on a Monday.

Case Law: Cadbury Ireland v SIPTU and ATGWU

A dispute arose concerning payment for the August public holiday weekend in 1997. Cadbury Ireland's policy was to pay for an eight-hour day. The unions maintained that night shift workers transferring to day shift or coming off shift should receive ten hours pay for the public holiday based on the normal daily hours worked prior to the public holiday. The courts determined that if an employee normally worked on a Monday then he would be entitled to the amount received in respect of the normal daily hours worked on the last working day of the previous week, which in this case was 10 hours. If employees did not normally work on Mondays, then they should be paid one-fifth of a week's pay i.e. for eight hours.

5.2(c) Job Sharers

As a job sharer is not a full-time employee, he must have worked 40 hours or more in the 5 week period ending on the day before the public holiday to be entitled to a public holiday benefit. Assuming the job sharer meets this requirement; his public holiday entitlement is as follows:

- If a job sharer is scheduled to work on the day on which a public holiday falls, he will be entitled to the normal public holiday benefit for that day.
- If a job sharer does not work, or is not normally required to work on a public holiday and he normally works half the time worked by a full-time employee, the daily rate of pay for a public holiday shall be 1/10th of the sum (including any regular bonus or allowance, the amount of which does not vary in relation to the work done by the employee, but excluding pay for overtime) that is paid in respect of the last two weeks of normal working hours worked by him before that public holiday, provided that the daily rate is not more than half the daily rate he would have been entitled to for working on that day.

5.3 Sick Leave and Work Absence Affecting Public Holiday Benefits

An employee who is absent from work immediately before a public holiday will not be entitled to a public holiday benefit, if the absence is:

- In excess of 52 consecutive weeks by reason of occupational injury,
- In excess of 26 consecutive weeks by reason of illness or injury,
- In excess of 13 consecutive weeks by reason of an absence authorised by the employer, including lay off,
- Because he is out on strike,
- In excess of the first 13 weeks of carer's leave for each relevant person being cared for.

An employee absent on maternity or additional maternity leave, adoptive or additional adoptive leave, paternity leave, parental leave or force majeure leave, maintains his or her normal public holiday entitlement during the absence. As employees who are absent from work on various forms of leave cannot avail of a paid day off on the day (an employee cannot be on 2 types of leave at

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the same time), the most likely scenario is that the entitlement will be carried forward to when the employee is due to resume work.

Example 25

Rachel commenced employment in Wright Ltd on 10th February on a fulltime basis. On 28th February she slipped and fell on the factory floor sustaining a back injury and did not return to work until 1st April of the following year. What public holiday benefit is she entitled to, if any, for St. Patrick's Day in the first year and the following year?

Solution 25

As there is no qualifying period of employment for a full-time employee to be entitled to a benefit for a public holiday and Rachel has been out of work due to occupational injury for less than 52 weeks, she is entitled to a benefit for St. Patrick's Day in the first year.

However, she is not entitled to a benefit in respect of St. Patrick's Day in the following year as she has been out of work due to occupational injury for more than 52 weeks.

Example 26

Hannah commenced full-time employment on 10th June. After working for two weeks she fell ill and the payroll department received a sick cert for the next 8 weeks. What is her entitlement in relation to the August public holiday?

Solution 26

As there is no qualifying period of employment for a full-time employee to be entitled to a benefit for a public holiday and Hannah has been out sick for less than 26 weeks, she is entitled to a benefit for the August public holiday.

Example 27

Cathy has been working for her current employer for the past 5 years. Her employer has agreed to give her a career break for 7 months to go to Australia on 1st June. She is due to return to work on 4th January. What, if anything, is she entitled to in respect of the following public holidays?

- First Monday in June
- First Monday in August
- Last Monday in October
- Christmas Day – 25th December
- St Stephen's Day – 26th December
- New Year's Day – 1st January

Solution 27

Cathy retains her public holiday entitlement during the first 13 weeks of an absence authorised by her employer. She has no public holiday entitlement in respect of any public holiday occurring after the 13th week. Therefore, she will be entitled to public holiday benefit for the June and August public holidays, but she will not be entitled to public holiday benefit for the October public holiday, Christmas Day, St. Stephen's Day or New Year's Day.

Case Law: An Employee v An Employer (R057188/WT)

The employee worked with the employer from January 2006 until August 2007. She went on maternity leave in March 2007 and was due to return to work in October 2007. She resigned from the employer and sent a letter to this effect. The employer responded to the employee informing

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her that she had not fulfilled the contractual obligation of giving the employer three months' notice and as such would not pay the holiday pay due. The employee claimed that she was owed payment for 10 days holidays and 5 public holidays. The employer argued that the company was a small one and the suddenness of the resignation caused problems for them in finding a replacement. The Rights Commissioner upheld the complaint that the employer was in breach of Section 19(1) and 21(1) of the Act and awarded the employee €1,440 for ten days' holidays; €720 for the 5 public holidays and €4,000 compensation for the breach of the Act totalling €6,160.

5.4 Public Holiday Entitlement and change in working hours

Where an employer reduces an employee's working hours, for example by putting him on a 3 day week, this may affect his public holiday benefit entitlement, depending on what days he actually works. Where an employee is put on temporary layoff, he will be entitled to a public holiday benefit in respect of any public holiday arising within the first 13 weeks of layoff.

Example 28

Sarah works 35 hours per week (7 hours per day). Her employer advised her that she was now being put on a 3 day week (Tuesday, Wednesday and Thursday). What, if anything, is she entitled to in respect of a public holiday which falls on a Monday?

Solution 28

Subject to Sarah satisfying the condition that she has worked at least 40 hours in the preceding 5 week period, she will be entitled to a public holiday benefit equal to 1/5th of her normal week in respect of the public holiday. As Sarah cannot receive a paid day off on the day, she has a 1/5th entitlement to the employer's choice of any of the other 3 public holiday benefits previously listed. The most likely scenario is that Sarah will receive an additional 1/5th of her weekly wage in respect of the public holiday.

Example 29

Jim has worked on a full-time basis for ABC Ltd. for 15 years. All employees were advised that due to a downturn in business they will be placed on temporary layoff for a period of 30 weeks from 9th May until 4th December. What, if anything, is he entitled to in respect of the following public holidays?

- First Monday in June
- First Monday in August
- Last Monday in October

Solution 29

Jim will only be entitled to a public holiday benefit in respect of public holidays arising during the first 13 weeks of lay off. Therefore, he will be entitled to a public holiday benefit for the first Monday in June and August, but he will not be entitled to a public holiday benefit for the last Monday in October.

Example 30

Jane has worked full-time for JoJo Ltd for the past 10 years, working a 35 hour week (7 hours per day). Jane has been on maternity leave since November 2022 and is scheduled to return to work in the third week in June 2023 after 26 weeks maternity leave and 5 weeks additional maternity leave. She is not being paid by her employer while she is on maternity leave and has been suspended on payroll. What public holiday benefit is she entitled to accrue during her period of maternity leave and additional maternity leave?

Solution 30

As employees on maternity and additional maternity leave accrue their public holiday entitlements during their absence, Jane will accrue a public holiday benefit in respect of the 8 public holidays which occurred during her maternity leave and additional maternity leave.

- Christmas Day
- St. Stephen's Day
- New Year's Day
- First Monday in February
- St. Patrick's Day
- Easter Monday
- First Monday in May
- First Monday in June

Jane has accrued 8 public holidays during her maternity leave and additional maternity leave. The most likely scenarios are:

- JoJo Ltd could pay Jane a day's pay in respect of each public holiday as it arises (i.e. an additional day's pay), or
- JoJo Ltd could grant Jane an additional 8 days of annual leave.

This does not take into account that Jane may also wish to extend her absence by the number of days' annual leave accrued while she was on maternity leave.

6. Compliance Notice

An Inspector of the Workplace Relations Commission can issue a Compliance Notice to an employer under the **Organisation of Working Time Act 1997** where the employer is found to be in breach of the following holiday and public holiday provisions:

- For failing to calculate an employee's annual leave in accordance with the appropriate method specified in the Act,
- For failing to accrue annual leave when an employee is absent on certified sick leave,
- For failing to give an employee his statutory public holiday entitlement,
- For failing to calculate an employee's public holiday pay in accordance with the appropriate method provided for in the Act,
- For failing to compensate an employee in lieu of any accrued annual leave on cessation of employment,
- For failing to compensate an employee in respect of any public holiday which occurs during the week immediately following an employee's cessation, assuming the employee has worked for the employer during the 4 weeks preceding the week of the cessation.

See the Introduction to Employment Law chapter for further information on Compliance Notices.

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Organisation of Working Time Act 1997 - Rest and Working Time

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Maximum Weekly Working Time**
 - 4. Night Work**
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 - 6. Zero-Hours Contracts**
 - 7. Banded Hours Provisions**
 - 8. Information on Working Time**
 - 9. Rest Breaks**
 - 10. Compliance Notice**
 - 11. Code of Practice on Right to Disconnect**
-

1. Main Provisions

The Act provides for a maximum average working time of a “48-hour” working week. The Act also sets out statutory rights for employees in respect of rest periods, night work, Sunday work, ‘zero hours’ contracts and banded hours.¹

2. Covered Employees

The rest and maximum working time provisions of the Act apply to all employees, engaged under a contract of employment or apprenticeship, employed through an employment agency or working for the State except:

- Members of the Defence Forces
- Members of An Garda Síochána
- Those who control their own working hours
- Those employed by a relative or by his or her civil partner, who is a member of that relative or civil partner’s household, and whose place of employment is a dwelling house or a farm in or on which he or she and the relative or civil partner reside.

“Relative”, in relation to a person, means his or her spouse, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother or half-sister.

¹ Part II

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3. Maximum Weekly Working Time

Working time is defined as any time an employee is:

- a) at his or her place of work or at his or her employer's disposal, and
- b) carrying on or performing the activities or duties of his or her work.

In 2015, in the case of **Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Servicios SA – (ECJ Case C-266/14)**, the European Court of Justice (ECJ) ruled that where employees do not have a fixed place of work, the time they spend travelling between their home and their first and last customers each day, counts as working time. This case was brought by a group of workers of a Spanish security company who did not have a normal place of work and had to travel to client premises to install security systems.

The **National Minimum Wage Act 2000** states that working time does not include time spent travelling to and from work. Until this legislation is amended, employees in the private sector may not be able to enforce this ECJ ruling. However, under the principle of *direct effect*, the ECJ ruling applies to the public sector. Therefore, employees in the public sector who do not have a fixed place of work, may be able to count their travel time between their home and their first and last customers as working time.

The **National Minimum Wage Act 2000** also states that working time does not include time spent on call or on standby outside of the workplace. In 2018, in the case of **Ville de Nivelles v Rudy Matzak – (ECJ Case C-518/15)**, the ECJ ruled that “stand-by time which a worker spends at home with the duty to respond to calls from his employer within 8 minutes, very significantly restricting the opportunities for other activities, must be regarded as working time”. In this case, the employee, a firefighter, had to be present at his place of work within 8 minutes of receiving a call. Prior to the decision, the employee was only paid for the time he was called into work as the time spent on call was not considered working time. This decision causes uncertainty between working time and rest periods where an employee is on call outside the workplace. For example, if the employee was required to attend work within 30 minutes or 1 hour, would the ECJ have reached the same decision.

The maximum average working week is 48 hours. It is the employer's responsibility to ensure that an employee does not work in excess of an average of 48 hours in each period of 7 days.² The average working week is calculated over the appropriate reference period depending on factors such as the nature of work, and whether or not the employee is in an employment which is governed by a collective agreement. An employee's maximum average working hours per week should be calculated over a reference periods which does not exceed:

- 2 months – for night workers,
- 17 weeks – for those involved in the road transport sector (i.e. bus and truck drivers and other road transport workers who use a tachograph for recording driving times, breaks and rest periods),
- 4 months – for employees generally,
- 6 months for the following employees:
 - Employees employed at a distance from their place of work (e.g. sales reps),
 - Employees engaged in security or surveillance activities requiring a permanent presence in order to protect property and people, particularly security guards and caretakers,

² Section 15

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- Where work is subject to seasonality (e.g. tourism, postal services, agriculture),
- Where there is a foreseeable surge in activity (e.g. tourism), or
- Where employees are directly involved in ensuring continuity of service or production (e.g. hospital (including trainee doctors³), nursing home, harbour, airport, press, radio, television, post, telecommunications, ambulance, fire, gas, water, electricity, refuse collection, agriculture, research and development), or
 - Due to unusual or unforeseen circumstances beyond the employer's control,
- 12 months for employees who:
- Enter into a collective agreement with their employers which is approved by the Labour Court, and
- Work on board sea-going fishing vessels (the maximum hours shall not exceed 14 hours in any 24 hour period and 72 hours in any 7 day period).⁴

The reference periods referred to above are consecutive periods of time that do not include:

- Any period of statutory annual leave
- Any period of sick leave
- Leave granted under the **Carer's Leave Act 2001**
- Leave granted under the **Maternity Protection Acts 1994 to 2022** including health and safety leave
- Leave granted under the **Paternity Leave and Benefit Act 2016**
- Leave granted under the **Parent's Leave and Benefit Act 2019**
- Leave granted under the **Adoptive Leave Acts 1995 and 2005**
- Leave granted under the **Parental Leave Acts 1998 to 2019** including *Force Majeure* leave.

Example 1

Séan is employed by ABC Ltd and works 40 hours per week. However, due to an increase in his workload he regularly works overtime. His working hours over the past number of months are as follows:

Month	No. of Weeks	Hours per week	Total
January	4	49	196
February	4	50	200
March	5	49	245
April	4	42	<u>168</u>
Total	17		809

Comment on his working hours.

Solution 1

Séan has exceeded the maximum average working week of 48 hours in each week in the first three months of the year. However, when averaged over a period of 4 months he remains below the 48 hours as follows:

$$\begin{array}{l} \text{Total hours worked for four months} & \underline{\underline{809}} \\ \text{Total number of weeks} & 17 = 47.6 \text{ hours per week} \end{array}$$

³ European Communities (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004 and 2010 - S.I. No. 494/2004 and S.I. No. 553/2010

⁴ European Communities (Workers on Board Sea-Going Fishing Vessels) (Organisation of Working Time) Regulations 2003 - S.I. No. 709/2003

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Example 2

Peter is also employed by ABC Ltd to work 40 hours per week. However, he is required to work additional hours. The following is a list of the hours he worked for each of the first 22 weeks of the year:

Month	Week No.	Hours per week	Cumulative Total
January	1	50	50
	2	50	100
	3	50	150
	4	50	200
February	5	58	258
	6	58	316
	7	58	374
	8	58	432
March	9	60	492
	10	60	552
	11	60	612
	12	60	672
	13	50	722
April	14	42	764
	15	42	806
	16	0 (annual leave)	806
	17	0 (annual leave)	806
May	18	50	856
	19	50	906
	20	50	956
	21	50	1,006
	22	50	1,056

Comment on his working hours for this period of 22 weeks.

Solution 2

Peter has exceeded the maximum average working week of 48 hours in each week in the first three months of the year.

Period January to March =

13 weeks

Total hours worked (200+232+290) =

722 hours

Average hours worked per week = 722/13 =

55.54 hours per week

When calculated over a period of the first 4 months from January to April i.e. 17 weeks, he appears to average less than 48 hours per week.

Period January to April =

17 weeks

Total hours worked (200+232+290+84) =

806 hours

Average hours worked per week = 806/17 =

47.41 hours per week

However, during April, he took two weeks annual leave, which cannot be included in the calculation of average hours worked. When the average hours worked is calculated over a 4 month period from January to April (15 weeks excluding the 2 weeks on annual leave), the result is different and shows that he does exceed the average maximum working week of 48 hours.

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<i>Weeks worked from January to April =</i>	<i>15 weeks</i>
<i>Total hours worked for 4 months: (200+232+290+84)=</i>	<i>806 hours</i>
<i>Average hours worked per week: 806/15=</i>	<i>53.73 hours per week</i>

Case Law: An Employee v An Employer (R054555/WT)

The employee was in the employment of the employer between June 2006 and January 2007. He alleged that despite a request for details of his working time record, none were received. He complained that he did not receive the appropriate rest breaks and that he was required to work in excess of 48 hours per week and was not properly notified of the requirement to work overtime. The employer stated that it was a small start-up business and that the employee rarely worked beyond 5pm and only did on a small number of occasions. The complaint was upheld by the Rights Commissioner on the grounds that where there is a conflict of evidence, the onus is on the employer to provide the records to sustain his case. In the absence of records as required by the Act, the evidence of the employee must be accepted. The employee was awarded €4,000 in compensation.

4. Night Work

The work of night workers is averaged over 2 months. Night work is work carried out during night-time, which is defined as between midnight and 7am of the following day. A night worker is an employee who works at least 3 hours of his daily working time during night-time and does at least 50% of his yearly working hours during night-time. In a 24-hour period, an employer must not allow a night worker to work more than:

- An average of 8 hours (average calculated over a 2 month period, or a longer time as specified in an approved collective agreement), and
- 8 hours, where the work of a *special category night worker* includes night work.

A “**special category night worker**” is a night worker, in respect of whom, a mandatory health and safety assessment carried out by the employer in relation to the employment risks, indicated that the work involves special hazards, or heavy physical or mental strain.

5. Sunday Working

The Act sets out statutory rights for employees in respect of Sunday working and states that a contract of employment must specifically state if an employee is required to work on Sundays.⁵ The Act also states that a premium applies to Sunday working where the employee's pay has not taken account of the requirement to work on Sunday. The nature and rate of this premium should be negotiated and agreed between the employer and the trade union(s) representing employees or directly with the affected employees. The premium can be in the form of:

- A reasonable allowance, or
- A reasonable increase in the rate of pay, or
- Reasonable paid time off work, or
- A combination of two or more of the above.

Case Law: Sylwia Matijuk v Clontarf Castle Ltd (DWT 15122)

The employee claimed that her employer was in breach of the Sunday working provisions of the Act for the period of her employment as a premium of 5 cents per hour for every hour worked could not be considered as reasonable compensation for being required to work on a Sunday.

⁵ Section 14

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The employer contended that the premium was reasonable and satisfied the requirements of the Act.

The Labour Court found that the premium of 5 cents per hour as paid to the employee in compensation for being required to work on Sundays was not reasonable within the meaning of the Act.

Sunday work in the retail trade is governed by a Code of Practice and some of the main provisions are as follows:⁶

- The Sunday supplementary payment should be equivalent to the closest applicable collective agreement, which applies to the same or similar employment and which provides for a Sunday premium.
- Employees who commenced prior to 19th November 1998 should have the option to volunteer to opt into working patterns which include Sundays on a rota basis and form a regular working week i.e. not work more than 5 days out of 7.
- Newly recruited employees may be contracted to work Sundays as part of a regular rostered working pattern.
- Employees with a minimum of two years' service on a Sunday working contract should have the opportunity to seek to opt out of Sunday working for urgent family or personal reasons giving adequate notice to the employer.
- Meal breaks on Sundays should be standardised in line with the other working days of the week.
- All employees should have the opportunity of volunteering to work on the peak Sunday trading days prior to Christmas, in addition to their normal working week.

An employee who is recruited to work on Sunday only, is entitled to a premium rate.

6. Zero-Hours Contracts

The zero-hours provision is designed to ensure that employees who are required by their employer to be available for work, without the guarantee of work, will receive some compensation. Where an employee's contract of employment requires the employee to make himself available to work for the employer in a week:⁷

- a) For a certain number of hours ("the contract hours"), or
- b) As and when the employer requires him or her to do so, or
- c) Both a certain number of hours and otherwise as and when the employer requires him or her to do so,

the zero-hours provision of the **Organisation of Working Time Act 1997** apply.

Regarding the number of hours referred to in (a) and (c) above, the **Employment (Miscellaneous Provisions) Act 2018** provides that employers are prohibited from stating zero as the minimum number of hours in the contract. This provision does not apply to work done in emergency circumstances or for short-term relief work to cover routine absences for that employer.

If the employee does not work any hours in a week, the employer must compensate the employee for either 25% of the hours he was required to be available, or for 15 hours, whichever is lesser

⁶ Organisation of Working Time (Code of Practice on Sunday Working in The Retail Trade and Related Matters) (Declaration) Order, 1998 - S.I. No. 444/1998

⁷ Section 18

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subject to a minimum payment calculated as 3 times the national minimum wage rate or 3 times the applicable hourly rate specified in an Employment Regulation Order.

Example 3

James is employed under a zero-hours contract and is required to be available to work 10 hours per week (2 hours a day, Monday to Friday, from 6pm to 8pm). He earns €13 per hour.

His employer did not require him to work any hours this week. Calculate how much he is entitled to be compensated for this week.

Solution 3

James is entitled to be compensated for the lesser of 15 hours or 25% of the hours he is required to be available. In this case he should be compensated for 2.5 hours (25% of 10 hours). He would be entitled to be paid €32.50 (€13 x 2.5 hours).

However, this is subject to a minimum payment of 3 times the national minimum wage rate. The current national minimum wage is €11.30 per hour so the minimum payment he should receive is €33.90 (€11.30 x 3).

Where the employee actually works some of the contracted weekly hours, but this amounts to less than 25% of the hours which he was required to make himself available, then the employer must ensure the employee is compensated for a minimum of 25% of the hours for which he was required to make himself available subject to a minimum payment calculated as 3 times the national minimum wage rate or 3 times the applicable hourly rate specified in an Employment Regulation Order.

For example, where an employee is contracted to be available for 20 hours per week (4 hours a day, Monday to Friday, from 4pm to 8pm) but his employer only requested him to work 2 hours on Monday and he was not required to work for the remainder of that week; the employee should be paid for the 2 hours actually worked plus he must be compensated for an additional 3 hours. This ensures that the employee is compensated for a total of 5 hours this week (25% of 20 hours). Where the employee actually works more than 25% of the contracted weekly hours, he is paid for the hours worked and no additional compensation is due under the zero hours provision.

Example 4

Joan is employed under a zero-hours contract and is required to be available to work 35 hours a week, without the guarantee of work. What compensation is she entitled to, if she:

- (a) Works no hours this week?
- (b) Works 6 hours this week?
- (c) Works 20 hours this week?

Solution 4

- (a) Under the zero hours provision, if Joan does not work any hours this week, she is entitled to be paid for the lesser of 25% of the 35 hours for which she was required to be available for work, or for 15 hours, in this case 8.75 hours.
- (b) Even though Joan has only worked for 6 hours, she will be entitled to be paid for 8.75 hours (25% of 35 hours).

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- (c) *Joan is entitled to be paid for the 20 hours worked and no additional compensation is due as she has worked more than 25% of the contracted hours.*

Where an employee is employed on a zero-hours contract it is not possible to work elsewhere during the contracted hours, as his employer requires him to be available for work and he may be required to work at any time during the contracted hours subject to advance notification from the employer.

The zero hours provisions do not apply, if the employee was not required to work 25% of the weekly hours due to:

- Lay off,
- Being on short-time,
- Exceptional circumstances or an emergency (including an accident or the imminent risk of an accident),
- Unusual and unforeseeable circumstances beyond the employer's control,
- The employee being unavailable, due to illness or for any other reason.

Exception

The zero hours provision does not apply to an employee who is required to be on call to deal with any emergencies, other events or occurrences which may or may not occur.⁸ For example, a service engineer may have to be available to answer any calls outside of normal working hours. His contract of employment however, should state what payment, if any, he is entitled to for being on call or for actually answering any such call.

7. Banded Hours Provisions

The **Employment (Miscellaneous Provisions) Act 2018** introduces a provision which ensures that employees who regularly work in excess of their contracted hours over a reference period, may be placed in a band of weekly working hours which more accurately reflect the reality of their normal working hours.

An employee who believes that he is entitled to be placed in a band of weekly working hours must request the change in writing from his employer. The employer must then place the employee on the appropriate band of hours within 4 weeks from the date that the employee makes the request, unless the employer refuses the request (see below).

The band of weekly working hours that the employee is entitled to be placed on is determined by the employer, having regard to the average number of hours worked by the employee during the reference period.

The reference period is a period of 12 months after the commencement of employment with the employer and immediately prior to the employee making a request to be placed on a band of hours (i.e. the employee must be employed for 12 months before they can make a request and the band is determined by the employer based on the average weekly hours worked by the employee during the 12 month period prior to the request from the employee). The reference period includes a continuous period of employment with the employer prior to the introduction of this provision.

The bands of weekly working hours are as follows:

⁸ Section 18(5)

Band	Hours From	Hours To
A	3 hours	6 hours
B	6 hours	11 hours
C	11 hours	16 hours
D	16 hours	21 hours
E	21 hours	26 hours
F	26 hours	31 hours
G	31 hours	36 hours
H	36 hours and over	

Where an employee has been placed in a band of hours, the average of the employee's working hours over the following 12 months must fall within that band. The Act does not require an employer to offer hours of work in any week where the employee is not otherwise expected to work.

7.1 Exceptions to being placed on banded hours

An employer can refuse to place the employee on the band requested where:

- There is no evidence to support the claim to the hours worked during the reference period,
- There has been a significant adverse change to the business during or after the reference period,
- There is an emergency, accident or other exceptional circumstances which could not be avoided despite the employer exercising due care, or
- Where the average hours worked by the employee during the reference period were affected by a temporary situation which no longer exists.

The banded hours provision does not apply where an employer has already entered into a collective agreement involving working hours.

7.2 Refusal by employer to place employee on a band of hours

Where an employee believes that his employer has failed to place him on a band of weekly working hours following a request from the employee, or the employer unreasonably refused the request, the employee may make a complaint to the WRC.

Where an Adjudication Officers finds the complaint to be well founded, he can require the employer to comply with this provision and place the employee on the appropriate band of hours. An employer will not be ordered to pay compensation to an employee for the employer's failure to comply with this provision.

Case Law: Aer Lingus/Aer Lingus Ireland Limited v Cliona O'Leary (DWT207)

This case involves an appeal by the employer of the decision of an Adjudication Officer to the Labour Court regarding the calculation of the Band of Hours an employee should be placed on. The employee had a contract of employment which provided for 20 hours per week. The employee worked up to 37.5 hours per week. The employee argued that her employer failed to place her on the appropriate band as the employer did not consider time spent on annual leave to be hours worked, which the employer considered to be in accordance with the banded hours provision of the Act.

The employee argued that, as time spent on annual leave was considered to be time spent working for annual leave and public holiday purposes, it should be considered as time worked for this

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purpose. The employee also argued that if time spent on annual leave was excluded, the outcome of any banded hours calculation would result in a figure less than the average working hours, and the objective of the Act would be defeated (i.e. allowing for 4 weeks annual leave, this would result in 48 weeks hours being divided by a 52 week reference period).

The Labour Court acknowledged the employer's arguments and the ambiguity in the Act and had to resort to the Interpretation Act 2005 to "apply the intention of the Oireachtas" and the only reasonable means to ensure that intention was achieved is by using a divisor equal to the number of weeks actually worked by the employee. Thus, in a reference period of 52 weeks where an employee has spent, for example, 4 weeks on annual leave, the divisor for calculating the band of hours should be 48.

This determination makes no reference to public holidays when an employee does not work and is granted a paid day off on that day, however it is likely that the Labour Court may reach a similar decision as outlined above.

8. Information on Working Time

An employer must give an employee advance notice of the hours, which the employee will be required to work. Generally, the contract of employment will state the daily times of starting and finishing employment. Otherwise, the employer must notify the employee at least 24 hours before the first day in each week that the employee is required to work to include the start time and finish time for each day, and the employer is obliged to ensure that the work takes place within the days and times notified to the employee.⁹ It is sufficient for the employer to post a notice of this within the workplace (e.g. on a staff notice board).

Where the employer does not give the employee at least 24 hours' notice, or the work does not take place during the specified days or times notified to the employee, the employee has the right to refuse to work without any adverse consequences. The employee can accept to do the work if they so wish.

For example, an employee should receive 24 hours advance notice of his working hours if he is employed on a roster, a zero-hours contract or if he is required to work additional hours such as overtime.

This advance notice provision does not apply if the work or additional work arises due to emergency or unforeseen circumstances.

9. Rest Breaks

9.1 Daily Rest Breaks

An employee must not be required to work more than 4½ hours without a 15 minute break, or more than 6 hours without a 30 minute rest break (which may include the first rest break). A break allowed to an employee at the end of the working day shall not be regarded as satisfying this requirement. Every employee has a general entitlement to 11 consecutive hours daily rest per 24 hour period. Rest breaks need *not* be paid and are not considered as 'working time'.¹⁰

⁹ Section 17 as amended by European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. 686/2022)

¹⁰ Section 12

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The Act does not specify what rest breaks an employee is entitled to where he works more than 6 hours, for example, where an employee works a 12 hour shift. However, at a minimum, the employee would be entitled to another 15 minute break when he has worked another 4½ hours i.e. after 10½ hours.

Special provisions apply to rest breaks for certain retail trades.¹¹ These trades include any premises in which a retail trade or business is carried out including hairdressers and dry cleaners, but excludes hotels and any business requiring an intoxicating liquor licence. In such trades, if the employee works between 11.30am and 2.30pm and works more than 6 hours, he is entitled to a break of one hour between the hours of 11.30am and 2.30pm. This break may include the 15 minute break that the employee was entitled to after 4½ hours work.

Example 5

Lisa works from 8am to 5.30pm in a clothing shop. What is her daily rest break entitlement?

Solution 5

Lisa cannot be required to work more than 4½ hours without a 15 minute break. As she works more than 6 hours and works between the hours of 11.30am and 2.30pm in a shop, she is entitled to a break of one hour between 11.30am and 2.30pm. This may include the first rest break of 15 minutes i.e. the second break can be reduced to 45 minutes if the employee took the first break of 15 minutes.

9.2 Weekly Rest Breaks

Every employee has a general entitlement to one period of 24 consecutive hours rest in a 7 day period, preceded immediately by an 11 hour daily rest period.¹²

Where an employer does not grant an employee a 24 hour rest period in a 7 day period, the employer must grant the employee two rest periods of 24 hours each in the following 7 day period. Where the two rest periods of 24 hours are consecutive, they must be preceded by an 11 hour daily rest period. Where the two rest periods of 24 hours are not consecutive, they must each be preceded by an 11 hour daily rest period.

Unless the employee's contract of employment states otherwise, the period of 24 hours rest must be a Sunday, or if the rest period exceeds 24 hours, should include a Sunday.

Case Law: Sylwia Matijuk v Clontarf Castle Ltd (DWT 15122)

The employee claimed that on 2 occasions she was required to work on seven consecutive days and on 1 occasion she was required to work on eleven consecutive days. The employee acknowledged to the Court that on each occasion she was afforded her appropriate rest periods of 24 hours, but she was not afforded a period of daily rest (11 hours) immediately preceding those rest periods.

The employer contended that on the occasion of a 7 day period of consecutive working from 28th August to 3rd September 2014 the employee was afforded the required daily rest period prior to two rest periods. The employer contended that on the other occasion of 7 days consecutive working and on the occasion of 11 consecutive days working, the appropriate 24 hour rest periods were afforded to the employee.

¹¹ Organisation of Working Time (Breaks at Work for Shop Employees) Regulations 1998, S.I. 57/1998

¹² Section 13

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The Labour Court found that on 2 occasions the appropriate daily rest was not afforded to the claimant immediately preceding a 24 hour period of rest.

These rest breaks and intervals may be varied if there is an approved collective agreement in place. If there are variations in rest times and rest intervals under agreement, equivalent compensatory rest must be available to the employee.

Time spent ‘on call’ or ‘on standby’ is not considered to be working time under the Act, but once ‘called out’, an employee is considered to be working. An employee should have 11 hours rest, either before, or after, the call out.

9.3 Weekly Working Hours and Rest Breaks for Under 18 year olds

	Age 14	Age 15	Age 16	Age 17
Max Hours Term time	Nil	8 hours per week	8 hour day 40 hour week	8 hour day 40 hour week
Max Hours Holidays	7 hour day 35 hour week	7 hour day 35 hour week	8 hour day 40 hour week	8 hour day 40 hour week
Max Hours Work Experience	8 hour day 40 hour week			
Breaks	½ hour after 4 hours	½ hour after 4 hours	½ hour after 4½ hours	½ hour after 4½ hours
Daily Rest	14 hours	14 hours	12 hours	12 hours
Weekly Rest	2 days together	2 days together	2 days together	2 days together

Under 16 year olds must have 21 days free from work during school summer holidays. In exceptional circumstances, 16 and 17 year olds may work up to 11.00pm if there is no school the next day, but cannot then start work before 7.00am.

9.4 Exemptions from Rest Provisions

Legislation provides for exemptions from the provisions dealing with daily rest, rest and intervals at work, weekly rest and night work provisions, **subject to equivalent compensatory rest periods** being provided within a reasonable period of time for certain categories of employees, as follows:

Organisation of Working Time Act 1997 - Rest and Working Time

	Rest and intervals at work (4.5/6 hours)	Daily Rest (11 hours)	Weekly Rest (24 hours + preceding 11 hours)	Night Work provisions
Shift workers changing shift or on split shift ¹³	Not Exempt	Exemption Applies	Exemption Applies	Not Exempt
For exceptional or unforeseen circumstances ¹⁴	Exemption Applies	Exemption Applies	Exemption Applies	Exemption Applies
Transport Workers ¹⁵	Exemption Applies	Exemption Applies	Exemption Applies	Exemption Applies
Civil Protection Services ^{16*}	Exemption Applies	Exemption Applies	Exemption Applies	Exemption Applies
If a collective agreement is in place or for certain categories of employees**	Exemption Applies	Exemption Applies	Exemption Applies	Not Exempt

*Civil Protection services include employees working:

- In a prison or place of detention that involves the maintenance of security in that prison or place of detention,
- As a fire fighter by a fire authority,
- As an authorised officer (excluding a member of An Garda Síochána) within the meaning of the **Air Navigation and Transport Acts 1950 to 1988**,
- By Dublin Port Company as a member of its harbour police,
- By the Irish Coast Guard, and other persons (including contractors of the Irish Coast Guard) carrying out an activity in support of the emergency service of the Irish Coast Guard, not being clerical in nature.

**Includes those involved:

- Wholly or mainly in an activity in which the employee is regularly required by the employer to travel distances of significant length,
- In an activity of security or surveillance to protect persons or property (e.g. security guard, caretaker or security firm), or
- In ensuring the continuity of production or the provision of services (e.g. hospital (including trainee doctors¹⁷), nursing home, harbour, airport, press, radio, television, post, telecommunications, ambulance, fire, gas, water, electricity, refuse collection, agriculture, tourism, research and development).

Road Transport Workers

Special conditions apply to those performing road transport of goods or passengers (e.g. bus or truck drivers and crew) travelling in vehicles fitted with a tachograph.¹⁸ They must take a 45

¹³ Section 4

¹⁴ Section 5

¹⁵ Organisation of Working Time (Inclusion of Transport Activities) Regulations 2004 - S.I. No. 817/2004 and Organisation of Working Time (Non application of certain provisions to persons performing mobile road transport activities) Regulations 2015 – S.I. 342/2015

¹⁶ Organisation of Working Time (Exemption of Civil Protection Services) Regulations 1998 - S.I. No. 52/1998

¹⁷ European Communities (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004 and 2010 - S.I. No. 494/2004 and S.I. No. 553/2010

¹⁸ European Communities (Organisation of Working Time of Persons Performing Mobile Transport Activities) Regulations 2005 - S.I. No. 2/2005

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minute break after 4½ hours of driving which may be split into two breaks of 15 minutes and 30 minutes during the 4½ hours of driving.

If the work involves both driving and non-driving duties, assuming the time spent driving is less than 4½ hours, employees are entitled to:

- A 30 minute break after 6 hours, which may be split into two 15 minute breaks, or
- A 45 minute break after 9 hours, which may be split into three 15 minute breaks.

The 11 hour daily rest break may be reduced to 9 hours subject to a maximum of three times per week. Road transport workers may work up to 60 hours in any given week, however their average working week cannot exceed 48 hours, averaged over a 17 week period.

Sea-going Fishing Vessels

Regulations provide for maximum working hours and minimum hours of rest for workers on board sea-going fishing vessels, and require records to be kept of their daily hours of work.¹⁹ The minimum hours of rest shall not be less than 10 hours in any 24 hour period and 77 hours in any 7 day period. The daily rest period of 10 hours may be split into a maximum of two periods, one of which must be at least 6 hours in duration, and the interval between the rest periods must not exceed 14 hours. Exceptions are permitted in the case of emergencies, but adequate rest must be given as soon as practicable. The Regulations also set out the enforcement powers of authorised officers and requirements to notify the relevant authority in the EU State where the vessel is registered.

9.5 Code of Practice on Compensatory Rest

A Code of Practice containing guidelines on compensatory rest was produced by the Labour Relations Commission (LRC).²⁰ The Code of Practice provides that compensatory rest should be provided as soon as possible after the statutory rest break has been missed out on. When granting compensatory rest, employers should have regard to the circumstances pertaining to that employment and to the health and safety requirements for the job (e.g. night work, operating machinery or equipment, etc.).

Case Law: Stasaitis v Noonan Service Group Ltd & Anor (2013 No. 311 MCA)

A security employee, who was engaged in an activity which exempted the employer from the statutory requirement to provide the prescribed breaks, claimed that he had not been provided with compensatory rest periods. The employee was obliged to remain in a security hut for the duration of his 8 hour shift, without any scheduled rest breaks. However, he could take as many breaks as he wanted during periods of inactivity and it was accepted there were periods of inactivity. He was provided with amenities, kitchen facilities, and an area in the security hut in which he could take such breaks, however he was not allowed to leave the hut during his shift. It was accepted that he availed of these arrangements for breaks.

It was found that the employer's obligation to make compensatory arrangements may be met where the employee is provided with better physical conditions, amenities or services whilst at work. The employee was provided with kitchen facilities and an area within which to take breaks during periods of inactivity and was provided with amenities and facilities to do so. It was

¹⁹ European Union (Workers on Board Seagoing Fishing Vessels) (Organisation of Working Time) (No. 2) Regulations 2003 - S.I. No. 441/2020

²⁰ Organisation of Working Time (Code of Practice on Compensatory Rest and Related Matters) (Declaration) Order 1998 - S.I. No. 44/1998

Organisation of Working Time Act 1997 - Rest and Working Time

determined that under these circumstances the requirement to provide compensatory rest periods was deemed to have been complied with.

9.6 Double Employment

An employer must not employ an employee to work during a relevant period of 24 hours, 7 days or 12 months; if the employee has already worked for another employer, unless the aggregate working hours of the employee for all employments does not exceed the total number of hours allowed under the Act for that period.²¹ Where an employer employs an employee in contravention to this provision, both the employer and employee are guilty of an offence. If prosecuted, it will be a good defence for the employer to prove that he was not aware that the employee was employed by another employer or that the aggregate hours worked by the employee exceeded those allowable under the Act.

10. Compliance Notice

An Inspector of the Workplace Relations Commission can issue a Compliance Notice to an employer under the **Organisation of Working Time Act 1997** where the employer is found to be in breach of the following working hours and rest break provisions:

- For failing to grant compensatory rest where the employee is unable to avail of his daily or weekly rest breaks,
- For failing to grant employees an 11 hour daily rest period,
- For failing to grant an employee his daily rest breaks (i.e. where the employee works more than 4.5 hours without a 15 minute break or 6 hours without a 30 minute break, which can include the first 15 minute break),
- For failing to grant an employee his weekly rest break (24 hours preceded by an 11 hour daily rest break),
- For not paying an employee reasonable compensation for working on a Sunday,
- For permitting employees to work in excess of the average working week,
- For permitting a night worker to work in excess of the limits specified in the Act,
- For failing to provide employees with the at least 24 hours advance notification of his working hours,
- For breaching the zero hours provisions under the Act.

See the Introduction to Employment Law chapter for further information on Compliance Notices.

11. Code of Practice on Right to Disconnect

The Workplace Relations Commission Code of Practice on the Right to Disconnect,²² which was published in March 2021, provides guidance on best practice to employers and their employees on the Right to Disconnect. As a result of technological advances, individuals are always contactable and accessible. As a result, employers must put in place policies and procedures to ensure that:

- Employees' rights are preserved,
- Employers and employees adhere to their statutory obligations,
- Work is carried out safely, and
- The working relationship between the employer and employee is balanced and mutually beneficial.

²¹ Section 33

²² Workplace Relations Act 2015 (Workplace Relations Commission Code of Practice on the Right to Disconnect) Order 2021 – S.I. 159 of 2021

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The Code applies to all types of employment, whether employees are working remotely, in a fixed location, at home or are mobile. While failure to follow the Code is not an offence in itself, the Code shall be admissible in evidence in any proceedings before a Court, Labour Court or the WRC and will be taken into account as necessary when determining any claim.

The Right to Disconnect refers to an employee's right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails, telephone calls or other messages, outside normal working hours. The Right to Disconnect has three main elements as follows:

- The right of an employee to not routinely perform work outside normal working hours.
- The right to not be penalised for refusing to attend to work matters outside of normal working hours.
- The duty to respect another person's right to disconnect (e.g. by not routinely emailing or calling outside normal working hours).

11.1 Right to Disconnect – Employer Obligations

Employers are obliged to manage the working time of employees by:

- Providing detailed information to employees on their working time, in accordance with the **Terms of Employment Information Act 1994 to 2014**.
- Ensuring that employees are informed of what their normal working hours are reasonably expected to be.
- Ensuring that employees take daily and weekly rest periods and breaks in accordance with the **Organisation of Working Time Act 1997**.
- Ensuring a safe workplace, including reviewing their risk assessment and, where necessary their safety statement in line with the **Safety, Health and Welfare at Work Act 2005** and taking account of their obligations which includes 'managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health and welfare at work of his or her employees at risk'. This includes an obligation to not work in excess of the maximum weekly working hours.
- Not penalising an employee for acting in compliance with any relevant legislation.

11.2 Right to Disconnect – Employee Obligations

The Code of Practice also outlines the obligations of an employee as follows:

- Ensure that they manage their own working time.
- Cooperate fully with any appropriate mechanism utilised by an employer to record working time including when working remotely.
- Be mindful of their colleagues', customers'/clients' and all other people's right to disconnect (e.g. by not routinely emailing or calling outside normal working hours).
- Notifying the employer in writing of any statutory rest period or break to which they are entitled to and were not able to avail of on a particular occasion and the reason for not availing of such rest period or break.
- To take reasonable care to protect their safety, health and welfare and the health and safety of co-workers, while at work as required under the **Safety, Health and Welfare at Work Act 2005**.
- Being conscious of their work pattern and aware of their work-related wellbeing and taking remedial action if necessary.

11.3 Right to Disconnect Policy

Employers should engage proactively with employees and/or their trade union or other employees' representatives as appropriate to develop a Right to Disconnect Policy that takes account of the particular needs of the business and its workforce. The Policy should take account of health and safety legislation, the employee's terms and conditions of employment as they relate to working time and the statutory obligations on both employers and employees.

Where appropriate, the Policy should recognise that certain businesses and roles within those businesses do not always operate on a standard hours basis, but in a manner responsive to customer needs where flexibility is required to meet the needs of the business, and as agreed in the employee's terms of employment.

The Policy should allow for occasional legitimate situations when it is necessary to contact staff outside of normal working hours, including but in no way limited to ascertaining availability for rosters, to fill in at short notice for a sick colleague, where unforeseeable circumstances may arise, where an emergency may arise, and/or where business and operational reasons require contact out of normal working hours.

11.3.1 Sample Right to Disconnect Policy

A Right to Disconnect Policy could follow the generic layout below and should be tailored to meet the individual needs of each organisation.

Introduction

The introduction should set out the purpose of the Policy with a statement tailored to meet individual workplaces.

Wellbeing

Wellbeing may be addressed in other company policies and these can be referenced as appropriate, otherwise the Policy should emphasise that the Right to Disconnect sits within the broader objective of ensuring the safety, health and wellbeing of employees.

Obligations on Employers and Employees

The Policy should stress that a joint effort will be required to implement the Policy and remind both employers and employees of their statutory obligations.

- a. Employer Obligations...
- b. Employee Obligations...

The Role of Managers

Given that line managers will have close interaction with employees, their role in ensuring that employees are able to disconnect from work should be clearly set out.

Working Hours

The Policy should address the issue of working hours given that 'normal working hours' may be very different for employees even within the same organisation (i.e. while some may work a more traditional hourly pattern, for example 9 to 5, others may work flexibly or have varying working time patterns). The Policy must explicitly state that all have the right to disconnect in line with the Policy.

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Communications

The workplace's policy in relation to communications should be set out and should emphasise that employees personal time is respected and that there is a general expectation that employees disconnect from work e-mails and communications outside of normal working hours.

Meetings

The Policy should set out the workplace's policy in relation to scheduling and attendance at meetings.

Raising Concerns

The Policy should set out the procedure for raising concerns, informally and formally, in relation to the Right to Disconnect.

Template Policy Content

A Right to Disconnect Policy may open by stating the intention and purpose of the Policy and include a positive statement along the following lines.

(a) Introduction

The health and wellbeing of our employees is of the utmost importance to us and we encourage and support our employees to prioritise their own wellbeing.

Disconnecting from work is vital for your wellbeing, and to help you achieve a healthy and sustainable work-life balance. The organisation recognises that every employee is entitled to switch off outside of their normal working hours and enjoy their free time away from work without being disturbed, unless there is an emergency or agreement to do so, for example while 'on call'.

This company recognises that, where appropriate, flexible working arrangements can facilitate employees in meeting personal and family commitments and assist in maintaining a positive work life balance.

Equally, as an employer we recognise that flexible working arrangements undertaken by employees can assist in meeting our business needs. Where flexible working arrangements are in place, it can be beneficial for both employees and employers. However, as an employer we are conscious that an 'always on' working environment can bring additional challenges and risks for our employees.

To encourage and support our employees in balancing their working and personal lives whether they work traditional hours in the workplace, work remotely or flexibly we have adopted a 'Right to Disconnect' company policy, which includes best practice guidance around wellbeing, working hours, the use of technology and more.

(b) Template Wellbeing Clauses

Employees working from home are encouraged to schedule post-work leisure activity, in order to create some separation from the end of their workday and the beginning of their personal time.

*Staff, including those engaging in flexible working arrangements or remote working are reminded to switch off from work, to monitor their working hours and to take breaks in accordance with the **Organisation of Working Time Act 1997** (OWTA 1997), away from work devices. Staff must take reasonable care of their health and safety in accordance with section 13 of the **Safety, Health and Welfare at Work Act 2005** (SHWAWA 2005).*

(c) Template Communications Clauses

Where possible, e-mails should be checked or sent only during normal working hours.

Due to differing/non-standard patterns of work in the organisation, some employees may send communications at times which are inopportune for other employees (e.g. weekends). The sender should give due consideration to the timing of their communication and potential for disturbance, and the recipient should understand that they will not be expected to respond until their working time recommences.

Employees should not feel that they must respond to social communications from colleagues outside of their working hours, and the Policy should state whether or not social media platforms are acceptable means of communication in that particular workplace.

Where a manager sends communications outside agreed working hours, unless business and operational needs dictate that an immediate response is required, a statement will be attached to an out of hours email tempering the expectation of an immediate response.

Managers should speak to a team member if they notice that they are sending emails at odd hours or logging in excessively – this may be a sign that they are finding it difficult to manage their workload or ‘switch-off’.

(d) Template Email Out of Office and Footers

My normal working hours are from X to Y. I will respond to you when I am back at work.

I am currently working flexibly so while it suits me to send this email now, I do not expect a response or action outside your own working hours.

(e) Template Meetings Clause

We respect people’s time by only inviting them to meetings where they play an active role and have something to contribute. Employees should be mindful of and manage how much virtual communication they have each day.

While meetings are crucial to strengthen connections between individuals and teams, the frequency and timing of meetings should be continuously reviewed to ensure optimum use of time and allow colleagues time to work outside of meetings.

Meetings should be scheduled during normal working hours, avoiding lunchtime where possible.

CHAPTER 37

Organisation of Working Time Act 1997 – Records

- 1. Main Provisions**
 - 2. Records to be kept**
 - 3. Form OWT 1**
 - 4. Exemptions**
 - 5. Failure to keep Records**
 - 6. Protection from Penalisation**
 - 7. Redress Provisions**
-

1. Main Provisions

The **Organisation of Working Time Act 1997** requires employers to keep records for a period of at least 3 years which show that the provisions of the Act are being complied with by the employer.¹ The records must be kept at the premises where the employee works, or if the employee works at various locations, the records should be retained at the principal location where the employee is managed from.

2. Records to be kept

To ensure the Act is being complied with, an employer should keep records of the number of hours worked by employees, daily and weekly rest breaks, annual leave and public holiday leave granted and payments made in respect of annual and public holidays to employees. The Act specifies that the records to be kept by the employer must include the following information:²

- Name, address and PPSN of each employee,
- Brief statement of the employee's duties,
- A copy of their statement of terms of employment,
- Details of days and total hours worked in each week by each employee,
- Details of days and hours granted to employees by way of annual leave or in respect of public holidays and the payment made to each employee in respect of that leave,
- Details of any additional day's pay for public holidays provided in each week to each employee,
- A copy of a written record of a notification issued to an employee detailing starting and finishing times of work.

The above records must be kept in such a form to enable an inspector to fully understand the contents. The onus is on the employer to show that he has complied with the Act.

¹ Section 25

² Organisation of Working Time (Records)(Prescribed Form and Exemptions) Regulations 2001 – S.I. No. 473/2001 – Regulation 3

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3. Form OWT 1

A time and attendance system or clocking-in facility should provide an employer with a record of the days and hours worked in each week by each employee. However, where there is no clocking-in facility available in a workplace, a Form OWT 1 (see example at the end of this chapter), or a substantially similar form, must be kept in respect of each employee.³ Where the employer and employee agree, this form may be completed by the employee and must then be presented to the employer for counter-signature. The employer must then retain the form as part of the employee's records and it must be available for inspection by an inspector from the Workplace Relations Commission (WRC) at all reasonable times.

While the regulations incorporate the Form OWT 1 for recording an employee's hours of work, the WRC produced alternative sample record keeping forms (see samples at the end of this chapter) for the purposes of complying with the legislation and proving compliance with the Act.

4. Exemptions

While Regulations do not specifically indicate that an employer is required to keep a record of daily or weekly rest breaks, (note that the official OWT 1 form merely requires details of the hours of work excluding rest breaks), such a record would be required to prove that an employer grants the appropriate daily and weekly rest breaks to an employee. To alleviate the burden on employers of recording the daily and weekly rest breaks taken by each employee, employers are exempt from keeping a record of daily and weekly rest breaks where they have:⁴

- Electronic record-keeping facilities i.e. flexi-time or clocking-in facilities, or
- Manual record keeping facilities (e.g. Form OWT 1 or similar form),

once the following conditions are met:

- a) The employer notifies each employee in writing of the daily and weekly rest breaks he is entitled to take under the Organisation of Working Time Act 1997 (which may be included in the employee's written statement of terms of employment or employee handbook), and
- b) The employer notifies each employee in writing of the procedures which an employee should follow in order to notify his employer in writing of any daily or weekly rest periods which the employee was entitled to, but was not able to avail of, and the reason for not availing of such rest break, (these procedures may be included in the employee's written statement of terms of employment or employee handbook), and
- c) The employer keeps a record of:
 - Notifications issued under (a) above,
 - The procedures issued by the employer under (b) above, and
 - Notifications made by an employee to an employer under (b) above where the employee was unable to avail of a rest break.

A notification by an employee under (b) above must be made within 1 week of the day on which the rest period or break was due but could not be availed of by the employee. The employer must

³ Organisation of Working Time (Records)(Prescribed Form and Exemptions) Regulations 2001 – S.I. No. 473/2001 – Regulation 4

⁴ Organisation of Working Time (Records)(Prescribed Form and Exemptions) Regulations 2001 – S.I. No. 473/2001 – Regulation 5

Organisation of Working Time Act 1997 – Records

offer an equivalent compensatory rest break to the employee as soon as possible with regard to the health and safety of the employee. The employer cannot be held responsible where the employee fails to avail of the opportunity for compensatory rest which was made by the employer.

5. Failure to keep Records

An employer who fails to keep records under these regulations shall be guilty of an offence and shall be liable on summary conviction to a Class C fine not exceeding €2,500.⁵

Case Law: An Employee v An Employer (R054555/WT)

The employee was employed from May 2004 until February 2007. The employee sought compensation for the failure of the employer to provide him with appropriate rest breaks, failure to give him adequate notice of overtime and requiring him to work in excess of 48 hours per week. The employer stated that the employee received his statutory breaks and that as he generally worked the same hours each week, he was aware of the overtime requirements. It was accepted by the employer that the hours of work exceeded 48 hours per week by a small margin, however this was at the request of the employee. The Rights Commissioner disallowed the complaint regarding lack of notice for daily overtime but found the complaint regarding working in excess of 48 hours per week to be well founded. In his decision he made comment on the absence of the proper records as required by Section 12 of the Act. The employee was awarded €2,500 in compensation.

6. Protection from Penalisation

The Act prohibits an employer from penalising or threatening to penalise an employee for:⁶

- Invoking any right or entitlement provided under this Act,
- Having in good faith opposed by lawful means an action which is unlawful under this Act,
- Giving evidence in any proceedings under the Act, or
- Giving notice of his intention to do any of the above.

Penalisation means any act or omission by an employer or a person acting on behalf of an employer that has a detrimental effect on the employee regarding any term or condition of his employment, which although not limited to, can include the following:

- Suspension, lay-off or dismissal, or the threat of any of these actions,
- Demotion or loss of opportunity for promotion,
- Transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- Imposition of any discipline, reprimand or other penalty, including a financial penalty, and
- Coercion or intimidation.

Where penalisation of the employee constitutes an unfair dismissal within the meaning of the **Unfair Dismissals Acts 1977 to 2015**, relief can be granted under the **Unfair Dismissals Acts 1977 to 2015** or this Act, but not both. This option may exist for an employee with more than one year's service, whereas an employee with less than one year's service should present a case under the **Organisation of Working Time Act 1997**. The redress available under both pieces of legislation is very similar.

⁵ Organisation of Working Time (Records)(Prescribed Form and Exemptions) Regulations 2001 – S.I. No. 473/2001 – Regulation 7

⁶ Section 26, as amended by Employment (Miscellaneous Provisions) Act 2018

CHAPTER 37

7. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled “Introduction to Employment Law”. If an employee is successful in taking an action against his employer, the Adjudication Officer will issue a determination, which shall do one or more of the following:⁷

- Declare the complaint was or was not well founded,
- Require the employer to comply with the relevant provision, or
- Require the employer to pay the employee compensation not exceeding 2 years remuneration.

Form OWT 1

Organisation of Working Time Act, 1997

Employer's PAYE Registered Number: _____

Business Name of Employer: _____

Business Address: _____

Employee's PPS Number: _____

Surname: _____ First Name: _____

Number of hours worked by employee per day and per week (excluding meal breaks and rest breaks)

<i>Week Comm:</i>	<i>Hours</i>						
<i>And ending:</i>		<i>And ending:</i>		<i>And ending:</i>		<i>And ending:</i>	
<i>Day</i>		<i>Day</i>		<i>Day</i>		<i>Day</i>	
Monday		Monday		Monday		Monday	
Tuesday		Tuesday		Tuesday		Tuesday	
Wednesday		Wednesday		Wednesday		Wednesday	
Thursday		Thursday		Thursday		Thursday	
Friday		Friday		Friday		Friday	
Saturday		Saturday		Saturday		Saturday	
Sunday		Sunday		Sunday		Sunday	
Weekly Total		Weekly Total		Weekly Total		Weekly Total	

I declare that the above information in relation to daily and weekly hours worked is correct.

Signature of Employer: _____

Signature of Employee: _____

⁷ Section 27 as amended by the Workplace Relations Act 2015



Aid Consultancy Services Chartered Surveyors Chartered Environmental Consultants
Workplace & Industrial Consultants

(For Single Employee – Record for one month)

Organisation of Working Time Act Form – Single Employee

Employer Name:

Employer Registration Number:	[] [] [] [] [] [] []
Surname	[]
Forename	[]
Employee Ref.	[]
PPS No	[] [] [] [] [] []

Week starts on (please specify day); _____

Statutory Entitlement under the OWTA.

- Employees are entitled to:
- A daily rest period of 11 consecutive hours per 24 hours A weekly rest period of 24 consecutive hours per seven days, following a daily rest period.
 - A 15-minute break if working 4.5 hours.
 - A 30-minute break if working six hours.
- Some Industries** are covered by Registered Employment Agreements (REAs) and Employment Regulation Orders (EROs), which may contain different regulations regarding rest breaks.
Employers should ensure that the appropriate rest breaks are granted.

Week	Date: Please Specify Day	Day 1		Day 2		Day 3		Day 4		Day 5		Day 6		Day 7	
		Start Time	Finish time												
Week 1															
	Total Hours worked														
Week 2															
	Total Hours worked														
Week 3															
	Total Hours worked														
Week 4															
	Total Hours worked														
Week 5															
	Total Hours worked														

Total hours worked should exclude all rest breaks
(Paid and unpaid)

I declare that the above information in relation to daily and weekly hours worked is correct and that I have received my statutory rest entitlements. (please tick)

Employee Signature: _____

Date: _____

Employer Signature: _____

Date: _____



An Coimisiún um Chaidreamh san Ait Oibre
Workplace Relations Commission

Organisation of Working Time Act Form – Multiple Employees

(For Multiple Employees – Record for one Week)

Number:

Employer Name:

Employer Registration Number:

Week starts on
(Please specify day)

For date commencing:

**Total hours worked should exclude all rest breaks
(paid and unpaid)**

Statutory Entitlement under the QWTA

Employees are entitled to:

- A daily rest period of 11 consecutive hours per 24 hours A weekly rest period of 24 consecutive hours per seven days, following a daily rest period
 - A 15-minute break if working 4.5 hours.
 - A 30-minute break if working six hours.

Some industries are covered by Registered Employment Agreements (REA's) and Employment Regulation Orders (ERO's), which may contain different regulations regarding rest breaks. Employers should ensure that the appropriate rest breaks are granted.

**** I declare that the information in relation to daily and weekly hours worked is correct and that I have received my statutory rest entitlements: (please tick)**

Employer Signature:

CHAPTER 38

Protection of Employees (Part-Time Work) Act 2001

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Comparable Employee**
 - 4. Overtime for Part-Time Workers**
 - 5. Holiday & Public Holiday Entitlements for Part-Time Workers**
 - 6. Less Favourable Treatment of Part-Time Workers**
 - 7. Penalisation**
 - 8. Protection against Penalisation**
 - 9. Redress Provisions**
 - 10. Posted Workers and Foreign Nationals Working in Ireland**
-

1. Main Provisions

This Act provides for the removal of discrimination against part-time employees in that part-time employees cannot be treated in a less favourable manner than a comparable full-time employee, in relation to conditions of employment. It also provides that all employee protection legislation applies to a part-time employee in the same manner that it already applies to a full-time employee with any qualifying conditions (with the exception of any hours threshold) applying to a full-time employee, also applying to a part-time employee.

The Act aims to improve the quality of part-time work and promote the development of part-time work on a voluntary basis which takes into account the needs of employers and employees.

The following definitions apply under the Act:¹

Part-time employee means an employee whose normal hours of work are less than the normal hours of work of a comparable full-time employee in relation to him. For example, if the comparable full-time employee works a 35 hour week, then, a part-time employee is anyone who works less than 35 hours per week, i.e. an employee working a 30 hour week in this employment would be considered to be a part-time employee.

Full-time employee means an employee who is not a part-time employee.

Normal hours of work mean the average number of hours worked by either a part-time or full-time employee each day during a reference period.

Reference period means a period, which is of not less than seven days, or more than twelve months duration.

¹ Section 7(1)

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2. Covered Employees

The Act applies to any part-time employee (including casual workers) working under a contract of employment, apprenticeship or working for the State.²

In the case of agency workers, the person who pays the wages (e.g. the employment agency or client-company) is the employer and is responsible for ensuring that a part-time employee is not treated in a less favourable manner than a comparable full-time employee.

3. Comparable Employee

A comparable employee is a full-time employee, to whom a part-time employee compares himself where:³

- a) The comparable employee and the part-time employee are employed by the same or associated employer, and if this does not apply,
- b) The full-time employee is specified in a collective agreement to be a comparable employee in relation to the part-time employee, and
- c) If neither (a) or (b) apply, the full-time employee is employed in the same industry or sector of employment as the part-time employee.

3.1 Comparing part-time and full-time employees

A part-time employee can be compared to a full-time employee, where any of the following conditions are met:⁴

- Both employees perform the same work under the same, or similar conditions, or
- The work performed by one of the employees is of the same, or a similar nature to that performed by the other and any differences are of small importance, or are not significant, or
- The work performed by the part-time employee is equal, or greater in value to the work performed by the comparable full-time employee, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

A part-time agency worker can only compare himself to a comparable employee who is also an agency worker. However, the **Protection of Employees (Temporary Agency Work) Act 2012** provides that an agency worker is entitled to the same basic working and employment conditions as if he had been recruited directly by the hiring entity. See chapter on **Protection of Employees (Temporary Agency Work) Act 2012**.

Where a condition of employment relates to the amount of hours worked, part-time employees only have a pro rata entitlement to such conditions in comparison to a comparable full-time employee (i.e. the entitlement shall be related to the proportion of the hours worked by a part-time employee).

4. Overtime for Part-Time Workers

A part-time employee is entitled to be paid for overtime as per his statement of terms of employment, which cannot be less favourable than the treatment of a comparable full-time employee.⁵ A part-time employee is entitled to the same rate of overtime (e.g. time and a half or double-time) as a comparable full-time employee.

² Section 3(1)

³ Section 7(2)

⁴ Section 7(3)

⁵ Section 9(1)

An employer's overtime policy could be to pay an overtime rate to all employees (whether part-time or full-time) in respect of any work performed by them at the weekend, or after a certain time in the evening, or a part-time worker must work the same number of weekly or daily hours as the full-time comparable employee before he can claim an overtime rate of pay. For example, if full-time employees are paid an overtime rate for any hours worked in excess of 40 hours per week, then a part-time employee who normally works 30 hours per week could be paid his normal basic rate of pay for his first 10 hours of overtime, with the overtime rate applying to any hours worked in excess of 40 hours per week. In this manner the part-time employee is not being treated any less favourably (or more favourably) than a comparable full-time employee.

Case Law: Boxmore Plastics Ltd v Curry (SIPTU) 2003

The claimant was a part-time worker. The union stated that the claimant should be paid overtime for any hours worked outside the normal roster. The Company rejected the claim, stating that overtime is paid only after the equivalent full time hours are worked. The Court found that the decision of the Company not to pay overtime to the claimants until they have worked the same number of hours as the comparable full-time worker did not constitute unfavourable treatment in breach of Section 9(1) of the Act.

Example 1

Paul is a part-time employee and works 20 hours per week as provided in his contract of employment. A comparable full-time employee works 40 hours per week. If Paul works overtime, when is he entitled to be paid an overtime rate?

Solution 1

Paul is entitled to be paid an overtime rate in accordance with the terms of his contract of employment which cannot be less favourable than the treatment of a comparable full-time employee. The contract could specify that Paul is to be paid an overtime rate for any hours worked in excess of his contractual hours, or as per the outcome of the above case, Paul would not be treated in a less favourable manner if he was required to work 40 hours per week before he became entitled to an overtime rate.

5. Holiday & Public Holiday Entitlements for Part-Time Workers

A part-time employee's statutory annual leave entitlement is calculated in accordance with the provisions of the **Organisation of Working Time Act 1997** depending on the number of hours worked by the part-time employee as follows:

- A minimum of 4 working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which he changes employment),
- 1/3rd of a working week for each calendar month in a leave year in which the employee works at least 117 hours, or
- 8% of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks).

Where more than one of the above methods is applicable, the employee is entitled to the greater period of annual leave where the results are not the same. A working week refers to the number of hours the employee normally works in a week.

Example 2

Pauline is a part-time employee and works 15 hours per week. What is her statutory annual leave entitlement?

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Solution 2

Pauline does not work 1,365 hours per year nor does she work 117 hours per month, hence her annual leave is calculated based on 8% of her hours worked, subject to a maximum of 4 working weeks.

15 hours x 52 weeks = 780 hours x 8% = 62.4 hours, but subject to a maximum of 4 working weeks which is 15 hours x 4 weeks = 60 hours. Pauline's annual leave entitlement is 60 hours.

In relation to public holiday entitlements, a part-time/casual employee must have worked at least 40 hours in the 5 weeks ending on the day before the public holiday to qualify for the public holiday benefit. Full-time employees are immediately entitled to a public holiday benefit.

6. Less Favourable Treatment of Part-Time Workers

There are two sets of circumstances in which a part-time employee, including part-time employees who work on a casual basis, may be treated in a less favourable manner than a comparable full-time employee:⁶

(a) Treatment can be justified on objective grounds

An objective ground for less favourable treatment of a part-time employee, must be based on considerations other than the status of the employee as a part-time worker and the less favourable treatment is for the purpose of achieving a legitimate objective of the employer and such treatment is necessary for that purpose.

For example, a part-time employee can be paid a less favourable rate than a comparable full-time employee, if the difference in pay can be justified on grounds other than the fact that the individual is a part-time employee, such as where the full-time employee is better qualified or more experienced, etc.

A ground which does not constitute an objective ground for a regular part-time employee may be capable of constituting an objective ground for a part-time employee who works on a casual basis.

If the less favourable treatment of a part-time employee is based solely on the fact that he is a part-time employee then it is *not* an objective ground for less favourable treatment.

Case law: Bus Éireann v A Group of Workers – PTD071 – 2007

The union argued that 189 part-time school bus drivers were denied equal rates of pay with full-time bus drivers, which was in contravention to the Act. This case was brought by the union by way of an appeal against the Rights Commissioner's decision which had found in favour of the employer.

The union argued that the Rights Commissioner was wrong to place too much emphasis on the collection of fares by the full-time drivers (which was not required by the part-time school bus drivers) although the school bus drivers had to check bus tickets and argued that the key part of the job was the driving and safe transfer of the passengers, which was common to both, and this was more challenging with only children on board. They also argued that some full-time bus drivers were part of a two person operation, and these drivers were not responsible for the collection of fares, and no comparison was made with Tour Bus drivers and Park and Ride bus drivers where no fares were collected.

⁶ Section 12

The employer argued that:

- *The work performed by the part-time school bus drivers was not similar in all respects to full-time drivers,*
- *When part-time drivers operate as regular drivers on a voluntary basis they receive the appropriate rate of pay,*
- *Full-time bus drivers have extra responsibilities which included the collection of fares, the balancing of cash, and lodgement to the relevant cash office,*
- *They did not accept the core responsibilities and skills were the same, as full-time drivers operated long distance/intercity routes over 7 days, whereas the part-time drivers operated to and from schools Monday to Friday.*

The employer also argued that if it was held that they discriminated against the part-time drivers, there was objective justification for this as the school bus service is open to tender by private bus operators, and price was a critical element of the procurement, and retention of this service was essential to the viability of the company.

The Labour Court considered both arguments and the relevant sections of the Act, especially the conditions which must be met to enable a part-time employee to be compared to a full-time employee and the provision which allows for less favourable treatment of a part-time worker based on objective grounds. The Labour Court carried out a workplace inspection to help determine if the part-time drivers carried out like work to that of full-time drivers.

The Court found that part-time drivers did not carry out the same work under the same or similar conditions, and the differences in work were significant. They then took the following factors into account to determine if the work performed by part-time drivers is equal or greater in value to the full-time drivers:

- *The degree of skill required by full-time drivers was marginally greater than that required by part-time drivers,*
- *The physical and mental requirements are significantly greater for full-time drivers due to collection of fares, balancing and lodging cash, changing routes, timetables, etc.*
- *The overall level of responsibility placed on full-time drivers is greater, primarily due to fact they have to deal with customer queries/needs, and*
- *The working conditions of the full-time bus drivers are more difficult than those of the part-time bus drivers, due to the various routes, having to work 5 out of 7 days on a shift rota, etc.*

In conclusion, the court found that the work of the part-time bus driver as a whole was not greater in value than the full-time drivers, and consequently there was no discrimination by the employer. As the Court found that there was no discrimination, the question of objective grounds as proposed by the employer does not arise.

(b) Pensions

A part-time employee may be treated in a less favourable manner than a comparable full-time employee in relation to any pension scheme or arrangement (e.g. a company pension scheme) where he works less than 20% of the normal hours worked by a comparable full-time employee. However, this provision does not prevent an employer and a part-time employee from entering into an agreement whereby that employee may receive the pro rata pension benefits of a comparable full-time employee.⁷

⁷ Section 9(4)

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It should also be remembered that the **Pensions (Amendment) Act 2002** requires employers to provide access to a standard Personal Retirement Savings Account (PRSA) to all employees, full-time or part-time, where the employee is not permitted to join the company pension scheme within 6 months of their commencement date.

6.1 Casual Workers

A casual worker is a part-time employee who works on a casual basis if at that time:⁸

- a) He has been in the continuous service of the employer for a period of less than 13 weeks, and that period of service and previous period of service by him with the employer are not of such a nature as could reasonably be regarded as regular or seasonal employment, or
- b) He fulfils the conditions specified in an approved collective agreement that has effect in relation to him and regards him for the purposes of that agreement as working on a casual basis.

7. Penalisation

The Act prohibits an employer from penalising a part-time employee on the grounds that:⁹

- He has exercised or proposes to exercise his right not to be treated in a less favourable manner than a comparable full-time employee in relation to conditions of employment,
- For having in good faith opposed by lawful means an action which is unlawful under the Act,
- For refusing to agree to a request by the employer to transfer from performing full-time work to performing part-time work or vice versa, or
- For giving evidence in any proceedings under the Act or giving notice of his intention to do so.

Any of the following actions taken by an employer constitute penalisation of an employee:¹⁰

- Dismissal of the employee, or
- An unfavourable change in the conditions of employment of the employee, or
- Unfair treatment of the employee, including selection for redundancy, or
- Any other action, which is prejudicial to his/her employment.

An employer shall *not* be considered to have penalised an employee in relation to a request by the employer to transfer the employee from full-time work to part-time work or vice versa, if the following conditions are met:¹¹

- The employer *must* have substantial grounds both to justify the making of the request *and* for taking any action consequent on the employee's refusal to transfer from full-time work to part-time work, or vice versa,
- The taking of the action is in accordance with the employee's contract of employment and the provisions of employment rights legislation.

⁸ Section 11(1)

⁹ Section 15(1)

¹⁰ Section 15(2)

¹¹ Section 15(2)(i)

8. Protection against Penalisation

Where a part-time employee has *less* than one year's service and is dismissed, he cannot make a claim for unfair dismissal under the **Unfair Dismissals Acts 1977 to 2015**. However, a case may be referred to an Adjudication Officer under the **Protection of Employees (Part-Time Work) Act 2001**.

Where a part-time employee has *more* than one year's service and is dismissed, a complaint may be referred under the **Protection of Employees (Part-Time Work) Act 2001** or under the **Unfair Dismissals Acts 1977 to 2015**, but not both.

9. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled "Introduction to Employment Law". If an employee is successful in taking an action against his employer, the Adjudication Officer will issue a determination, which shall do one or more of the following:¹²

- Declare that the complaint was, or was not well founded,
- Require the employer to comply with the relevant provision of the Act,
- Require the employer to pay the employee compensation which is just and equitable but not exceeding 2 years' remuneration.

It should be noted that where the ownership of a business changes after the contravention to which the complaint relates, the new employer will be considered as the employer with reference to the decision of the Adjudication Officer.

The complaints process in this Act (i.e. referring a case to an Adjudication Officer) does not apply to members of the Defence Forces.¹³

10. Posted Workers and Foreign Nationals Working in Ireland

EC Directive 96/71/EC on Posted Workers was transposed into Irish law as a miscellaneous provision of the **Protection of Employees (Part-Time Work) Act 2001**. The Act provides that the full range of Irish employee protection legislation applies to posted workers working in Ireland; and other foreign nationals, regardless of the nationality or residence, who enter into a contract which provides for them to be employed in Ireland or otherwise work in Ireland under a contract of employment.¹⁴

A posted worker is a "person who, for a limited period of time, carries out his or her work in the territory of an EU Member State other than the Member State in which he or she normally works". However, this definition does not apply to individuals who decide of their own accord to seek employment in another Member State, seagoing personnel in the merchant navy or the self-employed.

Under the **Protection of Employees (Part-Time Work) Act 2001**, posted workers and foreign nationals working in Ireland are entitled to receive the same basic employment rights as employees permanently employed in the State i.e. an entitlement to:

¹² Section 16 as amended by the Workplace Relations Act 2015

¹³ Section 19

¹⁴ Section 20

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- A written statement of their terms and conditions of employment,
- A minimum wage rate,
- An average working week of no more than 48 hours,
- Breaks during the working day,
- Paid annual leave,
- Public holiday benefit,
- Be paid in a legal manner, and
- Receive a payslip each time they are paid.

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Protection of Employees (Fixed-Term Work) Act 2003

- 1. Main Provisions**
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-

1. Main Provisions

The main provisions of the Act are to provide for the removal of discrimination against fixed-term employees in that fixed-term employees cannot be treated in a less favourable manner than a comparable permanent employee in relation to conditions of employment and to prevent abuse arising from the use of successive fixed-term employment contracts.

The following definitions apply under the Act:

Fixed-term employee means a person who has entered into a contract of employment with an employer, where the end of the contract is determined by an objective condition such as:

- (i) Arriving at a specific date,
- (ii) Completing a specific task, or
- (iii) The occurrence of a specific event.

Permanent employee means an employee who is not a fixed-term employee.

2. Covered Employees

The Act applies to any fixed-term employee working under a contract of employment or working for the State excluding:¹

- Agency workers placed on temporary assignments
- Apprentices
- Members of the Defence Forces

¹ Section 2(1) and Section 17

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- Trainee members of An Garda Síochána
- Trainee nurses

However, the Act does apply to workers employed directly by an employment agency.

3. Comparable Permanent Employee

A comparable permanent employee is an employee to whom a fixed-term employee compares himself or herself with:²

- a) Where the permanent employee and the fixed-term employee are employed by the same or associated employer, or
- b) Where (a) above does not apply (including a case where the fixed-term employee is the only employee of the employer), the permanent employee is specified in a collective agreement to be a comparable employee in relation to the fixed-term employee, or
- c) If neither (a) or (b) apply, the employee is employed in the same industry or sector of employment as the fixed-term employee.

3.1 Comparing Permanent and Fixed-Term Employees

A fixed-term employee can be compared with a permanent employee where any of the following conditions are met:³

- Both employees perform the same work under the same, or similar conditions, or
- The work performed by one of the employees is of the same, or a similar nature to that performed by the other and any differences are of small importance, or are not significant, or
- The work performed by the fixed-term employee is equal, or greater in value to the work performed by the other employee concerned, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

The comparable permanent employee may be of the opposite sex, or the same sex, to the fixed-term employee.⁴

4. Overtime for Fixed-Term Employees

Where a comparable permanent employee is paid overtime, then a fixed-term employee who compares himself or herself with that comparable permanent employee is also entitled to be paid for overtime hours worked at the same rate of payment (e.g. time and a half or double time) as his comparable permanent employee.⁵

5. Holiday Entitlements for Fixed-Term Employees

A fixed-term employee's statutory annual leave entitlement is calculated in accordance with the provisions of the **Organisation of Working Time Act 1997** depending on the number of hours worked by the fixed-term employee as follows:

- A minimum of 4 working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which he changes employment),
- 1/3rd of a working week for each calendar month in a leave year in which the employee works at least 117 hours, or

² Section 5(1)

³ Section 5(2)

⁴ Section 6(4)

⁵ Section 6(6)

- 8% of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks).

Where more than one of the above methods is applicable the employee is entitled to the greater period of annual leave where the results are not the same. A working week refers to the number of hours the employee normally works in a week.

6. Probation Periods

Where a fixed-term employee enters a fixed-term contract with an employer which provides for a probationary period, the length of the probationary period must be proportionate to the expected duration of the contract and the nature of the work.⁶

Where a fixed-term contract is renewed for the same functions, the contract shall not be subject to a new probationary period.

7. Less Favourable Treatment of Fixed-Term Employees

There are two sets of circumstances in which a fixed-term employee may be treated in a less favourable manner than a comparable permanent employee:

(a) Treatment can be justified on objective grounds

A ground would be considered as an *objective ground* for treatment in a less favourable manner (including the renewal of a fixed-term employee's contract for a further fixed term), if it is based on considerations other than the status of the employee as a fixed-term employee and the less favourable treatment is for the purpose of achieving a legitimate objective of the employer and such treatment is necessary for that purpose.⁷

For example, a fixed-term employee can be paid a less favourable rate than a comparable permanent employee if the difference in pay can be justified on grounds other than the fact that the individual is a fixed-term employee, such as, where the permanent employee is better qualified, has more experience or longer length of service, etc.

If the less favourable treatment of a fixed-term employee is based solely on the fact that he is a fixed-term employee then it is *not* an objective ground for less favourable treatment.

Case Law: An Post – v – Finbarr Monaghan & Deirdre Wade [2013] IEHC 404

This case involves an appeal by an employer to the High Court on a point of law.

The respondents (fixed-term employees) were employed on a series of fixed-term contracts from October 2008 which were due to expire in September 2011. In August 2010, the appellant (An Post) sought expressions of interest in a voluntary severance scheme. The respondents sought to apply under the enhanced severance scheme applicable for employees who had more than 1 year's service but less than 5 years' service. However, the scheme was restricted to permanent employees. The respondents were offered statutory redundancy only.

⁶ Section 9A as inserted by European Union (Transparent and Predictable Working Conditions) Regulations 2022 – S.I. 686/2022

⁷ Section 7(1)

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The respondents argued that they were discriminated against because of their status as a fixed-term employee and should have been treated in an identical manner to a permanent employee who had a similar length of service.

The appellant argued that the voluntary scheme was designed to encourage permanent staff, who had job security until retirement age, to voluntary relinquish their employment. The scheme was to compensate permanent employees in respect of the service they would forgo.

The Rights Commissioner found that the respondents were discriminated against and awarded them an enhanced severance payment. The appellant appealed the decision to the Employment Appeals Tribunal who rejected the appeal and affirmed the decision of the Rights Commissioner. The appellant further appealed the decision on a point of law to the High Court who again rejected the appeal and affirmed the original decision.

(b) Pensions

A fixed-term employee may be treated in a less favourable manner than a comparable permanent employee in relation to any pension scheme or arrangement where he works less than 20% of the normal hours worked by a comparable permanent employee. However, this provision does not prevent an employer and a fixed-term employee from entering into an agreement, whereby that employee may receive the similar pension benefits as a comparable permanent employee.

It should also be remembered that the **Pensions (Amendment) Act 2002** requires employers to provide access to a standard Personal Retirement Savings Account (PRSA) to all employees, including fixed-term employees, where the employee is not permitted to join the company pension scheme within 6 months of their commencement date.

7.1 Pro-Rata Principle

Where a term or condition of employment is dependent on the number of hours worked by the employee, the extent to which it relates to a fixed-term employee will be in proportion to the hours worked by that employee in comparison to the hours worked by a comparable permanent employee.

8. Objective Conditions Affecting a Fixed-Term Contract

An employer must inform a fixed-term employee in writing of the objective condition determining the contract i.e. whether it is:⁸

- Arriving at a specific date,
- Completing a specific task, or
- The occurrence of a specific event.

9. Renewing Fixed-Term Contracts

If an employer wishes to renew a fixed-term contract he must inform the employee in writing not later than the date of renewal of the objective grounds justifying the renewal of the fixed-term contract and the failure to offer a permanent contract. A fixed-term contract is acceptable as evidence in any proceedings under this Act.

⁸ Section 8(1)

9.1 Renewing Fixed-Term Contracts Indefinitely

An employer cannot employ an employee on a series of fixed-term contracts indefinitely.

If an employee is employed on two or more continuous fixed-term contracts, the aggregate duration of those contracts may not exceed 4 years.⁹ If a contract of employment includes a clause, which limits the term of employment contract for a fixed-term employee, in contravention to this rule, that term of the contract shall be void and the contract shall be deemed a permanent contract. However, if there are objective grounds justifying the renewal of a contract of employment for a fixed-term only, the above rules do not apply.¹⁰

It could be argued that where a job is dependent on external funding that this is an objective ground which justifies the renewal of a fixed-term contract, however this would need to have been made clear from the date of the first contract.

10. Employer Obligations – Information on Employment and Training

An employer is obliged to inform a fixed-term employee of vacancies which may occur so that the fixed-term employee has the same opportunity as other employees to secure a permanent position i.e. general announcement at a suitable place in the employee's place of employment.¹¹

An employer must also provide a fixed-term employee with access to appropriate training opportunities, as far as practicable.¹² In addition, an employer must keep employee's representatives i.e. unions, etc., informed about fixed-term work in the business.¹³

Case Law: Department of Foreign Affairs v A Group of Workers FTD071

The claimants were employed as temporary clerical officers at the passport office in Dublin. They were recruited through public competition and placed on a panel from which temporary positions were filled. When work became available they were contacted by the respondent and offered fixed-term contracts which were often extended. When the contracts expired they remained on the panel and were recalled as more work became available. Temporary clerical officers were let go as the work requirement diminished on a last-in-first-out basis. Recall was on the basis of seniority.

Each of the claimants first entered into a fixed term contract in either March or June 2001, and entered further fixed term contracts in each subsequent year. In March/June 2004 the complainants had completed their third year of successive employment. They were then given a further contract for a period of less than one year. Following the expiry of that contract they were given a contract which commenced on 9th January 2006 and was expressed to conclude on 15th December 2006. The claimants argued that they became entitled to a contract of indefinite duration when they were given a contract in January 2006. They further claimed that they were afforded less favourable treatment than comparable permanent employees in not being paid over the Christmas period of 2004/2005.

The respondent contended that the employment relationship had been brought to an end on the termination of each contract. It claimed that in every case the ending of one contract and the commencement of another was separated in time by a number of weeks or months. It further

⁹ Section 9(2)

¹⁰ Section 9(3)

¹¹ Section 10(1)

¹² Section 10(3)

¹³ Section 11

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argued that continuous employment relationships and successive relationships which are separated in time, no matter how short, are excluded from the Act.

The respondent denied that the claimants were laid-off and pointed out that it had not given the claimants lay-off notice as is required under the Redundancy Payments Acts. The respondent further argued that if the claimants had an entitlement to a contract of indefinite duration there were objective grounds for the continuing renewal of their contracts in that the claimants were employed to meet seasonal needs and exceptional work.

The Rights Commissioner found that the periods separating the claimants' contracts were periods of lay-off and accordingly the continuity of the claimants' employment was not broken. The Rights Commissioner concluded that the claimants were entitled to a contract of indefinite duration from January 2006 and awarded each of the claimants' compensation of €500 for the respondent's failure to pay them over the Christmas period in 2004/2005.

On appeal to the Labour Court by the Department, the Court found that where a reasonable belief existed but the employees were not given notice of lay-off, the employer could not subsequently claim an advantage from its default so as to defeat a claim by an employee to an entitlement of the type contended for in this case. Accordingly, it upheld that the Rights Commissioner was correct in holding that the periods between the claimants' successive fixed contracts could properly be classified as periods of lay-off and that continuity of employment was not broken. It was also stated that there were no objective grounds justifying the continuing renewal of the claimants' contracts for a fixed-term. It also found that there were no objective grounds for taking the claimants off the payroll over the Christmas period. Accordingly the decision of the Rights Commissioner was affirmed.

11. Penalisation

The Act prohibits an employer from penalising a fixed-term employee:¹⁴

- For exercising or proposing to exercise his right not to be treated in a less favourable manner than a comparable permanent employee in relation to conditions of employment,
- For opposing by lawful means an action which is unlawful under the Act,
- For giving evidence in any proceedings under the Act or giving notice of his intention to do so, or
- For dismissing an employee for the purposes of avoiding a fixed-term contract becoming a permanent contract where there has been a succession of fixed-term contracts.

The following constitutes penalisation of an employee:

- Dismissal of the employee,
- An unfavourable change in the conditions of employment of the employee,
- Unfair treatment of the employee, including selection for redundancy, and
- Any other action, which is prejudicial to his employment.

11.1 Protection against Penalisation

If an employee who has less than 1 years' service is dismissed within the meaning of the **Unfair Dismissals Acts 1977 to 2015**, he may refer a case to an Adjudication Officer under the **Protection of Employees (Fixed-Term Work) Act 2003**.¹⁵

¹⁴ Section 13(1)

¹⁵ Section 14

Protection of Employees (Fixed-Term Work) Act 2003

If an employee has more than 1 years' service he may refer a case to an Adjudication Officer under the **Protection of Employees (Fixed-Term Work) Act 2003** or under the **Unfair Dismissals Acts 1977 to 2015**, but not both.

The **Unfair Dismissals Acts 1977 to 2015** do not apply to the non-renewal of fixed-term contracts or specific purpose contracts provided that the contract is in writing, signed by both parties and clearly states that the Unfair Dismissal Acts do not apply.

However, the **Unfair Dismissals (Amendment) Act 1993** provides that if a fixed-term or specific purpose contract expires and an employee is offered another fixed-term contract within 3 months, if the second contract is not renewed then the employer may have to justify the dismissal. The aim of this provision is to prevent employers offering successive fixed-term contracts, either with or without a break.

12. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled "Introduction to Employment Law". If an employee is successful in taking an action against his employer, the Adjudication Officer will issue a determination, which shall do one or more of the following:¹⁶

- Declare that the complaint was or was not well founded, and/or
- Require the employer to comply with the relevant provision of the Act,
- Require the employer to re-instate or re-engage the employee, or
- Require the employer to pay the employee compensation, that is just and equitable but not exceeding 2 years' remuneration.

It should be noted that where the ownership of a business changes after the contravention to which the complaint relates, the new employer will be considered as the employer with reference to the decision of the Adjudication Officer.

¹⁶ Section 14 as amended by the Workplace Relations Act 2015

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Protection of Young Persons (Employment) Act 1996

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Minimum Age for Employment**
 - 4. Excluded Employees**
 - 5. Maximum Weekly Working Hours and Rest Breaks**
 - 6. Employer's Health and Safety Obligations**
 - 7. Records to be Kept by Employer**
 - 8. Offences and Penalties**
 - 9. Redress Provisions**
-

1. Main Provisions

This Act was introduced to protect young employees under the age of 18 years. The Act is designed to “protect the health of young workers and to ensure that work during the school years does not put a young person's education at risk”.

The Act sets minimum age limits for employment, rest intervals and maximum working hours, and prohibits the employment of under 18 year olds in late night work. Employers must keep specified records for their workers who are under 18 years of age.

2. Covered Employees

The Act applies generally to young employees under 18 years of age. Under the Act the following definitions apply:¹

Child means a person, who is under 16 years of age.

Young Person means a person who has reached 16 years of age but is under 18 years of age (i.e. a person aged 16 or 17 years).

3. Minimum Age for Employment

Employers may not employ persons under 16 years of age in a regular full-time job. Employers may take on 14 and 15 year olds for light work:²

- During the school holidays,
- Part-time during the school term (15 year olds only), or
- As part of an approved work experience or educational programme,

provided that the work is not harmful to their safety, health, or development.

¹ Section 1

² Section 3

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3.1 Evidence of Employee's Age

Before employing a young person or child, an employer must see a copy of the birth certificate, or other evidence of age. Before employing persons under 16 years of age, an employer must also get the written permission of a parent (or guardian).

4. Excluded Employees

Children under 16 years may be employed in film, cultural, sport or advertising work under licences issued by the Minister for Enterprise, Trade and Employment which set out specific protection for this age group.³ This work must not be harmful to the safety, health or development of the child and must not interfere with the child's attendance at school. The licence sets out the conditions under which these children may be employed, such as general conditions about parental consent, supervision and education arrangements, and the maximum working times and minimum breaks appropriate to each age group. Application forms for a licence are available at: http://www.workplacerelations.ie/en/Publications_Forms/Employment_of_Children_-_Licence_Application_Form.pdf

Where a young person is employed by a close relative in a family business or farming, the following provisions do not apply:⁴

- a) The prohibition on employing children,
- b) The duty on an employer to obtain the date of birth of the young person or child,
- c) The duty on an employer to obtain the consent of a parent or guardian of a child,
- d) The requirement to keep records of starting and finishing times and wage rate and total wages paid to each employee,
- e) The maximum working hours of 8 hours per day or 40 hours per week.

All other aspects of the Act apply (e.g. daily rest breaks, limits on night and early morning work, etc.) and the young person or child's health must not be put at risk.

The definition of a "close relative" under this Act means an employee who is employed:

- a) By their spouse, father, mother, grandfather, grandmother, stepfather, stepmother, brother, sister, half-brother or half-sister, and
- b)
 - (i) In a private dwelling house or on a farm, in or on which both the employee and employer reside, or
 - (ii) In a family undertaking on work which is not industrial work.

There are also specific exclusions for young workers who work at sea and in the Defence Forces.

5. Maximum Weekly Working Hours and Rest Breaks

5.1 Maximum Weekly Working Hours for under 16 Year Olds

Employers should not permit under 16 year olds to work in excess of the following weekly maximum working hours:

³ Section 7

⁴ Section 9 and Protection of Young Persons (Employment of Close Relatives) Regulations 1997 – S.I. No. 2/1997

	Age 14	Age 15
Term-time (School)	Nil	8 hours
Holiday Work	35 hours	35 hours
Work Experience	40 hours	40 hours

Where the maximum working week is 35 hours, the maximum day is 7 hours. If the maximum working week is 40 hours, the maximum day is 8 hours. During the summer holidays, persons under 16 years of age must have at least 21 days free from work.

5.2 Time off and rest breaks for persons under 16 years of age

Employees under 16 years of age are entitled to the following rest breaks:

- Half an hour rest break after 4 hours work
- Daily rest break of 14 consecutive hours off
- Weekly rest break of 2 days off, as far as practicable to be consecutive.

5.3 Working hours, time off and rest breaks for 16 and 17 year olds

Employees aged 16 or 17 years of age are subject to the following working hours and are entitled to the following rest breaks:

- Maximum working day of 8 hours
- Maximum working week of 40 hours
- Half an hour rest break after 4½ hours work
- Daily rest break of 12 consecutive hours off
- Weekly rest break of 2 days off, as far as practicable to be consecutive.

5.4 Limits on night and early morning work

Persons under 16 years of age may *not* be required to work before 8 a.m. in the morning or after 8 p.m. at night. In general, 16 and 17 year olds may *not* be employed before 6 a.m. in the morning or after 10 p.m. at night.

During school holidays, and on weekend nights where a young person has no school the next day, 16 and 17 year olds may work up to 11 p.m. at night (where the Minister for Enterprise, Trade and Employment is satisfied, following consultation with representatives of the employers and employees concerned, that there are exceptional circumstances). The ban on early morning work then moves forward to 7 a.m.

It is the employer's responsibility to ensure that all of the above conditions are met.

5.5 Employment in Licensed Premises Regulations

These Regulations concern the employment of young persons (16 or 17 year olds) in licensed premises, to work on general duties.⁵ General duties does not include supplying alcohol from behind the bar counter.

The Regulations provide that the young person may be required to work up until 11 p.m. in licensed premises on a day, which does not immediately precede a school day during a school term where the young person is attending school. The Regulations also require the young person not to re-commence work before 7 a.m. on the following day.

⁵ Protection of Young Persons Act 1996 (Employment in Licensed Premises) Regulations 2001 (S.I. No. 350/2001)

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The Regulations also provide that the employer of a young person employed on general duties in licensed premises should have regard to the terms of the **Code of Practice concerning the Employment of Young Persons in Licensed Premises**, which covers items such as rates of pay, training, study time, health and safety, etc.

5.6 Bar Apprentices Regulations

These Regulations provide that a young person (16 or 17 year olds), employed as an apprentice in a full time capacity in a licensed premises, may be required to work up to midnight on any one day and not before 8 a.m. on the following day provided that the young person is supervised by an adult.⁶

5.7 Double Jobbing Prohibited

Where a person under 18 years of age works for more than one employer, the combined daily or weekly hours of work may not exceed the maximum hours set out above.⁷ Employers, young persons (i.e. 16 and 17 year olds) or parents who help to breach this provision shall be guilty of committing an offence. Where an employer is prosecuted for such an offence, it will be a defence for the employer if he has no way of knowing that a person is double jobbing or if he has no way of knowing the hours worked in the young person's other employment.

6. Employer's Health and Safety Obligations

Employers are obliged (under regulations made under the **Safety, Health and Welfare at Work Acts 2005 to 2014**) to carry out a risk assessment before employing a child or young person and whenever there is a major change in the place of work which could affect the safety or health of the child or young person, and to take any preventive measures necessary.⁸

7. Records to be Kept by Employer

An employer must keep a register or similar record, with the following details in relation to every employee aged under 18 years:⁹

- Full name,
- Date of birth,
- Starting and finishing times for work,
- Wage rate and total wages paid to each employee.

The employer must keep the above records for at least 3 years at the place of employment.

Note: Where a young person is employed by a close relative in the family home or farm, the employer is not required to keep a record of the above information under this Act, however a record of the employee's name, wages paid (and date of birth in the absence of a PPS Number) would have to be retained for Revenue purposes.

Employers must give employees aged under 18 years, a copy of the official summary¹⁰ www.workplacerelations.ie/en/Publications_Forms/Under_18_A3_Poster.pdf (*a copy of which is contained at the end of this chapter*) of the Act within one month of commencing

⁶ Protection of Young Persons Act 1996 (Bar Apprentices) Regulations 2001 (S.I. No. 351/2001)

⁷ Section 10

⁸ Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007)

⁹ Section 15(1)

¹⁰ Protection of Young Persons (Employment) (Prescribed Abstract) Regulations, 1997 (S.I. No. 3/1997)

employment,¹¹ in addition to a statement of the terms of their employment which must also be given within one month of commencing employment. An employer must also display the official summary of the Act at the principal entrances to the premises where any of his employees work and in any other places that an inspector may require. The summary must be in such a position that it may easily be read by employees.¹²

8. Offences and Penalties

The Workplace Relations Commission (WRC) can take a summary criminal prosecution against an employer for any offence under this Act (e.g. not giving the child or young person their statutory rests breaks or where they work excess hours, failing to obtain evidence of a young person's age, double jobbing, failure to display a summary of the Act, etc.).¹³ An employee's trade union may also take a summary prosecution for offences under the Act.

Proceedings for an offence under this Act may be started within 12 months of the date of the offence. A person guilty of an offence under the Act is liable on summary conviction to a Class B fine of up to €4,000. Continuing contraventions can attract a Class E fine of up to €500 per day.

A summary prosecution is a case which is heard by a judge alone (no jury) and is generally heard in the District Court.

9. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled "Introduction to Employment Law". If an employee is successful in taking an action against his employer, the Adjudication Officer will issue a determination, which shall do one or more of the following:¹⁴

- Declare that the complaint was or was not well founded, and/or
- Order the employer to take a specified course of action, and/or
- Require the employer to pay the employee compensation, that is just and equitable having regard for all the circumstances.

A child or a young person under the age of 18 years, may be accompanied or represented by his or her parent or guardian, in a hearing before an Adjudication Officer.¹⁵

¹¹ Terms of Employment (Information) Act 1994 (Section 3(6)) Order, 1997 (S.I. No. 4/1997)

¹² Section 12(1)

¹³ Section 24

¹⁴ Section 14 as amended by the Workplace Relations Act 2015

¹⁵ Workplace Relations Act 2015, Section 41

CHAPTER 40

Official Summary of Protection of Young Persons (Employment) Act 1996

under EIGHTEEN

AGE LIMITS



For a regular job, the general minimum age is 16. Employers can take on 14 and 15 year olds on light work:

- part-time during the school term (over 15 years only)
- as part of an approved work experience or educational programme
- during the school holidays, provided there is a minimum three week break from work in the summer.

Any child under 16 may be employed in film, theatre, sports or advertising under licence.

MAXIMUM HOURS OF WORK PER WEEK



Under 18's may not be employed for more than 40 hours a week or 8 hours a day, except in a genuine emergency.
The maximum weekly working hours for 14 and 15 year olds are:

Age	14	15
Term-time	Nil	8 hours
Holiday work	35 hours	35 hours
Work experience	40 hours	40 hours

EARLY MORNING AND NIGHT WORK



The hours permitted are:

Age	Under 16's	16 and 17's
Early morning	after 8 am	after 6 am
Night work	<ul style="list-style-type: none">■ with school next morning■ no school next morning <i>e.g. holidays, weekends</i> up to 8 pm up to 8 pm	<ul style="list-style-type: none">up to 10 pmup to 11 pm* <i>(and not before 7am next morning.)</i>

*Please note: night work beyond 10 pm requires Ministerial approval by regulation. Specific regulations have been made for licensed premises.
Please contact telephone number below for further details.

REST BREAKS



Age	Under 16's	16 and 17's
30 minutes break after working	4 hours	4½ hours
Every 24 hours	14 hours off	12 hours off
Every 7 days	2 days off	2 days off

Duties of Employers

Employers must:
See a copy of the birth certificate and, before employing someone under 16, must get the written permission of the parent or guardian.

Keep a register containing the following particulars of each person under 18 employed:

- full name
- date of birth
- time work begins each day
- time work finishes each day
- rate of wages or salary paid per day, week, month or year, as appropriate
- total amount of wages or salary paid to each person.

Complaints

Complaints about breaches of the Act may be made in confidence to:

Workplace Relations Commission

There is an online complaint form available on the website for referring complaints to either Inspection Services or to an Adjudicator.

www.workplacelations.ie

The Commission's Inspectors have the powers to go into places of work, question employers and employees and examine records.

Exceptions and Penalties

The full provisions of the Act do not apply to:

- employment of close relatives
- employment in fishing, shipping, or the Defence Forces.

Offenders could face a Class B fine, and a Class E fine for each day of a continuing offence.

Please note: This poster gives a brief outline of the law and is not a legal interpretation.

If you want further information contact:

WRC

Air Comhláil um Chláráin san Áit Óige

Workplace Relations Commission

Workplace Relations Commission,
O'Brien Road
Carlow
R93 W7W2
1890 80 80 90

www.workplacelations.ie

*Callers should note that the rates charged for the use of 1890 (lo-call) numbers may vary among different service providers.

CHAPTER 41

Protection of Employees (Temporary Agency Work) Act 2012

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Basic Working and Employment Conditions**
 - 4. Equal Pay**
 - 5. Equal Conditions of Employment**
 - 6. Successive Temporary Assignments**
 - 7. Obligations on the Hirer**
 - 8. Offences**
 - 9. Penalisation**
 - 10. Redress Provisions**
-

1. Main Provisions

The **Protection of Employees (Temporary Agency Work) Act 2012** was signed into law on 16th May 2012 and provides that temporary agency workers, who are assigned by an employment agency to work for a third party (a hirer), receive the same basic working and employment conditions, access to information on job vacancies and access to facilities or amenities of the hirer as if that person had been recruited directly by the hirer.

2. Covered Employees

The Act applies to agency workers temporarily assigned by an employment agency to work for, and under the direction and supervision of a hirer,¹ from the first day of their assignment. The following definitions apply under the Act:²

Agency Worker means an individual employed by an employment agency under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a hirer.

Employment Agency means a person/business engaged in an economic activity who employs an individual under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a hirer.

As required by the **Employment Agency Act 1971**, an employment agency must hold a licence (issued by the Department of Enterprise, Trade and Employment) in order to legally carry out its activities. However, the above definition applies to all businesses acting as an agency, whether they hold a valid licence or not.

¹ Section 3

² Section 2

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Hirer means a person/business engaged in an economic activity, who engages the services of an agency worker to carry out work under their direction and control under an agreement with an employment agency.

The Act does not apply to the following individuals:

- An employee who is the owner of his company, which is contracted to work for a client, which may be facilitated by an agency.
- Employees engaged under a managed service contract under the direction and supervision of the managed service provider. For example, where a client engages the services of a cleaning company, the employees of the cleaning company perform their work in the client's premises, under the direction and control of the cleaning company.
- Individuals participating in any public funded vocational training scheme, for example the Work Placement Scheme or the Youth Employment Support Scheme.

3. Basic Working and Employment Conditions

The Act provides that agency workers are entitled to the same basic working and employment conditions for the duration of their assignment, as if they had been recruited directly by the hirer to do the same or similar work. Basic working and employment conditions refer to terms and conditions of employment which are required by law or collective agreement to be included in a contract of employment that specifically relate to:³

- a) Pay,
- b) Working time,
- c) Rest periods,
- d) Rest breaks during the working day,
- e) Night work,
- f) Overtime,
- g) Annual leave, or
- h) Public holidays.

The Workplace Relations Commission (WRC) has confirmed that any enhanced terms and conditions of employment which may apply to permanent employees of a hirer by virtue of a collective agreement (e.g. compassionate leave) do not apply to agency workers.

4. Equal Pay

An agency worker is entitled to the same rate of pay as if he was recruited directly by the hirer. Recruitment agencies should seek information from the hirer to ensure this provision is complied with (i.e. the employment agency needs to find out what rates of pay would have applied to that person if he were recruited directly by the hirer).

“Pay” is defined in the Act as follows:⁴

- a) Basic pay
- b) Any pay in excess of basic pay in respect of:
 - (i) Shift work,
 - (ii) Piece work,
 - (iii) Overtime,

³ Section 2 (1)

⁴ Section 2 (1)

- (iv) Unsocial hours worked, or
- (v) Hours worked on a Sunday.

The payments referred to in paragraph (b) above refer to the premium payable (i.e. amount in excess of basic pay) in respect of those hours worked. Piece work could be interpreted to include commission payments which are linked to sales or bonus payments which are linked to performance or output. This is the definitive list of pay elements contained in the Act. The Act specifically excludes the following from the definition of pay:

- Sick pay*,
- Payments under any pension scheme, or
- Payments under any share scheme.

*While an agency worker has no entitlement to sick pay under the **Protection of Employees (Temporary Agency Work) Act 2012**, the **Sick Leave Act 2022** provides an agency worker who have 13 weeks continuous service with an entitlement to statutory sick leave and pay.

Any other payment that is not specifically covered by the Act is therefore excluded. This means that agency workers do not have an equal entitlement to any of the following payments, which may be payable if the worker was recruited directly by the hirer:

- Maternity/Adoptive pay,
- Benefits in Kind,
- Ex-gratia termination payments,
- Any other payment not included in the definition above,
- Payment of expenses (Civil Service rates).

Case Law: Mahon v Nurse on Call – AWC/13/1

Nurse on Call (Employment Agency) appealed a decision of a Rights Commissioner (who found in favour of the employee (Mahon)) to the Labour Court. Mahon argued that the agency failed to comply with the Act because her basic working and employment conditions were less favourable than the conditions she would have received if she was employed directly by the hirer (the HSE). The issue to be decided by the Labour Court was whether a specialist midwifery allowance of €2,791 per year formed part of the employee's basic pay.

The Agency argued that the Act is very specific in what elements of pay are included (i.e. basic pay and any excess pay for shift work, piece work, overtime, unsocial hours or Sunday work) and if a particular payment is not included, it is automatically excluded. As this specialist allowance does not fall within the categories mentioned in the Act, the employee is only entitled to her basic pay excluding the specialist midwifery allowance. The Agency also argued that this specialist allowance is not paid to new entrants since 1st February 2012.

The employee argued that her basic pay for the purpose of the Act is made up of her basic salary and her specialist allowance. She argued that this allowance was increased by 3% in line with a 3% increase in basic salary and it was provided for by a Department of Health Circular.

The Act does not define basic pay. In reaching its decision, the Labour Court noted that the specialist midwifery allowance is pensionable and is paid to HSE nurses who are on sick leave or maternity leave. However, it is not included for the purpose of calculating overtime payments, shift rates or other hourly based premium payments. The Court also considered how the parties

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regard it. In 2002, the Department of Finance approved a “once off lump sum equal to 1% of annual basic pay ... in accordance with normal practice, annual basic pay includes allowance in the nature of pay”. An allowance in the nature of pay is normally understood to be one which is pensionable.

Although the specialist midwifery allowance was abolished for new entrants since 1st February 2012, it was not abolished for employees recruited prior to this date. Accordingly the Court decided that because the employment in question commenced prior to 1st February 2012, the allowance constituted part of the employee’s basic pay. The Court also stated that the midwifery allowance would not form part of the basic pay for a midwife engaged by the HSE through an agency for the first time since 1st February 2012. The Court required the Agency to restore the allowance to the employee with effect from 5th December 2011 and in addition to pay the employee €300 in compensation.

Agency workers are entitled to be paid by their employer (the employment agency for the purpose of this Act) in respect of statutory paid leave entitlements, for example jury service, Force Majeure leave, health and safety leave, ante-natal care, breast feeding breaks, etc.

The Act provides for an exception where the principle of equal pay does not apply to any given assignment if all of the following provisions are met:⁵

- The worker is employed by the recruitment agency under a permanent contract,
- The agency notifies the worker in writing that the entitlement to equal pay does not apply,
- During the period between assignments:
 - The worker is paid at least 50% of the pay to which he was entitled to in respect of his latest assignment, subject to this payment being equal to or greater than the worker’s entitlement under the **National Minimum Wage Acts 2000 and 2015**,
 - Any other legislation or collective agreement relating to pay is complied with.

It is unlikely that this exclusion will apply in practice as agency workers tend not to be paid by the employment agency during the period between assignments.

5. Equal Conditions of Employment

In addition to equal pay, agency workers are entitled to equal treatment in respect of employment conditions as if they were recruited directly by the hirer.⁶ As outlined in section 3 above, these conditions relate to working time, rest breaks, annual leave and public holiday entitlements. The **Organisation of Working Time Act 1997** specifies an employee’s minimum entitlement regarding rest breaks, annual leave and public holidays, etc. however, if the hirer grants more favourable terms to his own employees, then the agency worker will also be entitled to equivalent terms.

Where more favourable terms are linked to the length of the employee’s service (e.g. annual leave entitlements, pay increments) then an agency worker who also attains that length of service would be entitled to those same terms.

⁵ Section 6 (2)

⁶ Section 6 (1)

Protection of Employees (Temporary Agency Work) Act 2012

Where a hiring company provides facilities or amenities to its own staff, then such facilities must also be made available to an agency worker under similar terms. The following facilities are included in the Act:

- Canteen or other similar facilities,
- Child care facilities, and
- Transport services.

This list is not exhaustive and such facilities or amenities could include car parking, leisure and gym facilities, shower rooms, etc.

The agency worker cannot be treated any less favourably than a direct employee of the hirer unless this can be justified on objective grounds, other than the individual's status as an agency worker. For example, if access to a car parking space involves joining a waiting list, an agency worker is entitled to join the list in a similar manner to a direct employee.

The Act also provides that the hirer must inform an agency worker (who is assigned to work for that hirer at the time of the vacancy arising) of any vacancies arising at the same time such vacancies are notified to the employees of the hirer.

Example 1

Mary is an agency worker and has been placed on a temporary assignment with ABC Ltd. A vacancy has arisen within ABC Ltd which was distributed by email to all employees of ABC Ltd. As Mary is on a temporary assignment an email account was not set up for her and she did not receive the notice of the vacancy. Is ABC Ltd in compliance with this Act?

Solution 1

No, ABC Ltd is not in compliance with the Act, as agency workers must be informed of any vacancy at the same time as the employees of the hiring company.

6. Successive Temporary Assignments

The Act contains an anti-avoidance provision regarding the successive assignment of a temporary agency worker with the same hirer or a person connected with that hirer.⁷ Where an agency worker is engaged on two or more assignments with a hirer, each assignment will form part of a series of assignments. Where the following conditions are met, a series of assignments will be deemed to be a single assignment for determining an agency worker's basic working and employment conditions:

- a) The hirer is the same hirer as, or is connected to, the immediately preceding hirer, and
- b) The same agency worker is involved in each assignment, and
- c) The agency worker works in whole or in part at the same place of work or the agency worker is directed and supervised from the same place if he is required to work at various locations, and
- d) The agency worker does the same or similar work under the same or similar conditions, with any differences being insignificant.

For the purpose of this Act, a connected person includes:

- The spouse, child, parent, brother or sister of that individual,

⁷ Section 7

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- A business partner of that individual,
- An associated company, a holding company or a subsidiary company.

Where the duration of two or more assignments (excluding any breaks up to a maximum of 3 months and assuming the agency worker has not worked for another hirer during this break) are aggregated, the aggregated duration is considered to be a single assignment for determining an agency worker's basic working and employment conditions. Hence agency workers may become entitled to pay increases where the hirer operates incremental pay scales or increased annual leave which is linked to the length of service.

A series of assignments can be broken where any of the above conditions are not met.

Example 2

An agency worker is assigned to hirer 'A', is then assigned to hirer 'B' and is subsequently reassigned to hirer 'A'. There is no connection between hirer 'A' and hirer 'B'. Therefore the second assignment with hirer 'A' will not form a series of assignments.

A series of assignments will also be broken where a period of more than 3 months has elapsed since the previous assignment with that same hirer as any subsequent assignment is a new assignment for determining the agency worker's basic working and employment conditions.

Example 3

Ciara is an agency nurse and has just completed a 6 month assignment with a local hospital and was paid €22 per hour which is the same rate she would have received if she was employed directly by the hospital. On completion of this assignment, there was an interval of 1 week during which Ciara was unemployed, following which she was subsequently engaged on a 9 month assignment by the same hospital to perform the same job. The hospital awards its staff a pay increase of €1 per hour after the completion of 1 year's service. What pay rate is Ciara entitled to during her second assignment?

Solution 3

As the assignments have been separated by less than 3 months, they are deemed to be a single assignment. As the hospital awards a pay increase after 1 years' service, Ciara should be paid €22 per hour for the first 6 months of the second assignment, at which point she has accrued 1 years' service based on the aggregate of the two assignments. She should be paid €23 per hour for the remaining 3 months of the second assignment.

7. Obligations on the Hirer

Under the Act, the hirer is obliged to provide the employment agency with any information in the hirer's possession which the employment agency reasonably requires to enable the agency to comply with its obligations under the Act.⁸ It would be best practice for agencies to seek the necessary information from hirers in relation to basic pay rates, overtime rates, premium rates, Sunday rates, working time, rest breaks, annual leave and public holiday entitlements, etc. before assigning an agency worker.

Where an agency worker takes a case against his employer (employment agency) for breach of this Act, the hirer will be liable to compensate the agency in respect of any loss incurred by the

⁸ Section 15

agency, where the breach is found to have arisen as a result of the hirer's failure to provide the employment agency with the necessary information.

The **Safety, Health and Welfare at Work Acts 2005 to 2014** deem the hirer to be the employer of an agency worker and responsible for providing the worker with a safe working environment.

The hirer is deemed to be the employer of an agency worker for the purpose of the **Unfair Dismissals Acts 1977 to 2015**, and the hirer may be liable for any redress due to an agency worker who is unfairly dismissed by the hirer from an assignment.⁹

8. Offences

The **Protection of Employees (Temporary Agency Work) Act 2012** enhances the provisions of the **Employment Agency Act 1971**, which provides that an employment agency is not permitted to charge a fee to an individual where the individual successfully obtains employment with the hirer on conclusion of the assignment. Any agency who contravenes this provision is guilty of an offence and shall be liable on summary conviction to a Class A fine of up to €5,000.¹⁰

Any provision in a contract which prohibits the hirer from recruiting an agency worker after the assignment has been completed shall be void, however there is nothing preventing an agency seeking a fee from the hirer for the recruitment, training and assignment of that worker.

The Act also provides for protection for any person who, in good faith, reports a breach of the Act to the Gardaí or to WRC. Such a person shall not be considered to have committed a breach of duty towards any other person, and no action can be taken against the person who reports the incident.

Where a person knowingly makes a false statement to the Gardaí or WRC regarding a breach of the Act, that person is guilty of an offence which could result on summary conviction to a Class A fine of up to €5,000, or imprisonment for up to 12 months, or both. Conviction on indictment could result in a fine not exceeding €100,000 or imprisonment for up to 3 years or both.

A summary conviction is where a judge sits without a jury in the District Court. An indictable offence is one which must be heard before a judge and jury in the Circuit Court or Central Criminal Court.

9. Penalisation

The Act prohibits an employer and a hirer from penalising or threatening to penalise an agency worker for:

- Invoking any right or entitlement provided under this Act,
- Having in good faith opposed by lawful means an action which is unlawful under this Act,
- Making a complaint to the Gardaí or WRC regarding a breach of the Act,
- Giving evidence in any proceedings under the Act, or
- Giving notice of his intention to do any of the above.

Penalisation in relation to an employer (the employment agency), means any act or omission by an employer or a person acting on behalf of an employer that has a detrimental effect on the

⁹ Unfair Dismissals (Amendment) Act 1993, Section 13

¹⁰ Section 13 (2)

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agency worker regarding any term or condition of his employment, which although not limited to, can include the following:

- Suspension, lay-off or dismissal of the agency worker, or the threat of any of these actions,
- Demotion or loss of opportunity for promotion,
- Transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- Imposition of any discipline, reprimand or other penalty, including a financial penalty, and
- Coercion or intimidation.

Penalisation in relation to a hirer, means any act or omission by a hirer or a person acting on behalf of a hirer that has a detrimental effect on the agency worker regarding any term or condition of his employment, which although not limited to, can include the following:

- Suspension or dismissal of the agency worker, or the threat of any of these actions,
- Loss of opportunity to apply for a position of employment with the hirer,
- Transfer of duties, change of location of place of work or change in working hours,
- Imposition of any discipline, reprimand or other penalty, including a financial penalty, and
- Coercion or intimidation.

Where penalisation of an agency worker constitutes an unfair dismissal within the meaning of the **Unfair Dismissals Acts 1977 to 2015**, relief can be granted under the **Unfair Dismissals Acts 1977 to 2015** or the **Protection of Employees (Temporary Agency Work) Act 2012**, but not both. This option may exist for agency workers with more than one year's service, whereas an agency worker with less than one year's service should present a case under **Protection of Employees (Temporary Agency Work) Act 2012**. The redress available under both pieces of legislation is very similar.

10. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled "Introduction to Employment Law". An agency worker can present a complaint against his employer (the employment agency) where his employer:

- Fails to provide the worker with his basic working and employment conditions, including conditions which are under the control of the hirer such as working hours, rest breaks, annual leave and public holidays,
- Charges the worker a fee for securing employment for the worker on completion of the assignment,
- Penalises the worker in any of the manners as previously outlined.

An agency worker can present a complaint against the hirer where the hirer:

- Fails to inform the agency worker of any vacancies when such vacancies are relayed to the hirer's employees,
- Fails to provide access to collective facilities and amenities,
- Penalises the worker in any of the manners as previously outlined.

Protection of Employees (Temporary Agency Work) Act 2012

If an employee is successful in taking an action against his employer or the hirer, the Adjudication Officer will issue a determination, which shall do one or more of the following:¹¹

- Declare that the complaint was or was not well founded,
- Require the employer/hirer to take a specified course of action, which can include the reinstatement or re-engagement of the agency worker where a dismissal has taken place, or
- Require the employer/hirer to pay the employee compensation which is fair and equitable having regard to all the circumstances, but not exceeding 2 years' remuneration.

It should be noted that where the ownership of a business changes after the contravention to which the complaint relates, the new employer will be considered as the employer with reference to the decision of the Adjudication Officer.

¹¹ Workplace Relations Act 2015, Section 41

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Maternity Protection Acts 1994 to 2022

- 1. Main Provisions**
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-

1. Main Provisions

The main provision of the Acts is to provide for 26 weeks' maternity leave with protection of employment for female employees. In addition, an employee is entitled to further leave, known as additional maternity leave, up to a maximum of 16 weeks.¹

Since 1st October 2017, female employees are entitled to extend their maternity leave beyond 26 weeks where the baby is born more than 2 weeks before the expected week of confinement.

2. Additional Provisions

The **Maternity Protection Acts 1994 to 2022** also provide for:

- Leave on health and safety grounds if the **Safety, Health and Welfare at Work Acts 2005 to 2014** require it.
- Leave of an employed father from his employment, on the death of the mother during her maternity leave.

The **Paternity Leave and Benefit Act 2016** provides that the balance of paternity leave not taken by the child's father may be transferred to the child's mother, where the father dies before the end of the 28th week following the date of birth of the child. This is known as "transferred paternity leave".

The **Parent's Leave and Benefit Act 2019** provides that the balance of parent's leave not taken by the child's father may be transferred to the child's mother, where the father dies before the child's second birthday. This is known as "transferred parent's leave".

¹ Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006

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3. Covered Employees

The Acts cover all female employees (and male employees after the death of the mother following birth) from the first day of their employment, who are working:²

- Under a contract of service, whether full time, part time, permanent or fixed term, including civil servants, Gardaí and the Defence Force,
- As officers or servants of a local authority, Education and Training Boards, harbour authorities and health boards,
- As apprentices,
- As ‘agency temps’ - the person liable to pay the employee’s wages is deemed to be the employer,
- As a member of a local authority (i.e. councillors) who are deemed to be employed on a fixed-term contract.³

However, certain exceptions apply in relation to Gardaí and members of the Defence Forces.

4. Maternity Leave and Additional Maternity Leave

Maternity leave consists of 26 consecutive weeks leave. An employee is required to take pre-confinement maternity leave of a minimum of 2 weeks and a maximum of 22 weeks before the end of the week in which the baby is due (i.e. the employee must have a minimum of 4 weeks maternity leave remaining after the birth of the baby).⁴ The minimum maternity leave an employee must take is 2 weeks before the end of the expected week of confinement and 4 weeks after the end of the expected week of confinement. For this purpose, Saturday is generally regarded as the end of the week.

To exercise her right to maternity leave, an employee must:

- Notify her employer, in writing, of her intention to take maternity leave at least 4 weeks before the commencement of maternity leave, which must state the date on which the leave is due to commence, **and**
- Give her employer, or produce for her employer’s inspection, a medical certificate confirming the pregnancy and the expected week of confinement.

A member of a local authority is required to notify the meetings administrator within the local authority.

An employee may claim Maternity Benefit from the Department of Social Protection (DSP) during the 26 weeks of maternity leave.

In the event of a multiple birth, an employee is still only entitled to the 26 weeks maternity leave (or any extended leave due to a premature birth), and 16 weeks additional maternity leave.

² Section 8 of Maternity Protection Act 1994

³ Section 2(2) as amended by Local Government (Maternity Protection and Other Measures for Members of Local Authorities) Act 2022

⁴ Section 3 of Maternity Protection (Amendment) Act 2004

4.1 Extended Maternity Leave for Premature Births

The 26 week period of maternity leave will be extended in cases where the baby is born prematurely, (i.e. where the child is born more than 2 weeks before the expected week of confinement).⁵

The amount of extended leave will be equivalent to the duration of the premature birth period. The *premature birth period* means a period which commences on the actual date of birth of the child and expires 2 weeks before the end of the expected week of confinement (this is the latest date for commencing maternity leave as outlined above).

This means that if the baby is born more than 2 weeks early, the employee will be entitled to 26 consecutive weeks maternity leave from the date the baby was born. She will then be entitled to extend her maternity leave by the premature birth period. She may also claim Maternity Benefit from the DSP in respect of this extended leave equal to the duration of the premature birth period.

Example 1

Mary is an employee and works Monday to Friday each week. She was due to give birth on 18th March. She is required to take a minimum of 2 weeks pre-confinement maternity leave before the end of the week in which the baby is due (i.e. the latest date for commencing her 26 weeks maternity leave is Monday 6th March).

Mary's baby was born prematurely on 30th January. She is entitled to 26 weeks maternity leave with Maternity Benefit from this date. Mary is also entitled to extend her maternity leave by 5 weeks which is the duration of the premature birth period (i.e. between 30th January and 5th March). Mary is also entitled to claim Maternity Benefit for this 5 week period.

Any reference to maternity leave in the remainder of this chapter can be read as including extended maternity leave equal to the premature birth period.

4.2 Additional Maternity Leave

An employee is also entitled to 16 weeks additional maternity leave which must commence immediately after the 26 weeks maternity leave (or any extended leave due to a premature birth), except where the mother avails of any transferred paternity leave, which must be taken before the commencement of the 16 weeks additional maternity leave. Annual leave and sick leave cannot be taken between maternity leave and additional maternity leave. If an employee had her maternity leave extended because of a late birth, she is still entitled to take additional maternity leave.

Where an employee wishes to avail of additional maternity leave, she must notify her employer in writing at least 4 weeks (this can include the extended period of maternity leave due to a premature birth and/or the period of transferred paternity leave if applicable) before the additional maternity leave is due to commence.

During the period of additional maternity leave the mother will not receive any Maternity Benefit from the DSP.

⁵ Section 8, amended by Social Welfare Act 2017

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The Acts provide for the termination of additional maternity leave in the event of sickness of the mother. The **Paternity Leave and Benefit Act 2016** also provides for the termination of transferred paternity leave in the event of sickness of the mother.⁶

The employee must notify her employer in writing of her intention to terminate her additional maternity leave/transferred paternity leave due to her illness. As with any other absence due to illness, the employee may be entitled to claim Illness Benefit from the DSP, or payment from the employer's sick pay scheme, if applicable. If the employee opts to terminate her additional maternity leave or transferred paternity leave, the employee forfeits her entitlement to any outstanding balance of additional maternity leave or transferred paternity leave.

4.3 Postponement of Maternity or Additional Maternity Leave

The Acts also provide for the postponement of maternity leave and/or additional maternity leave in the event of the hospitalisation of the child, subject to the employer's agreement.⁷

The maximum period of postponement is 6 months. Leave may only be postponed after 14 weeks maternity leave have been taken and not less than 4 of those weeks are after the end of the week of confinement (the week in which the child was born). The employee must advise her employer in writing requesting postponement of the leave. An employer may request the following information regarding the postponement of leave:

- A letter from the hospital where the child is hospitalised confirming the hospitalisation, and
- A letter from the hospital or the child's medical practitioner confirming that the child has been discharged from hospital and the date of discharge.

The employee shall return to work during the period of postponement. The employee is entitled to take the remainder of her maternity leave and/or additional maternity leave not taken at the date of postponement in one continuous period commencing not later than 7 days after the child is discharged from hospital. However, if the employee returns to work during the period of postponement and is absent from work due to sickness, she shall be deemed to have resumed maternity/additional maternity leave on the first day of her absence. If she advises her employer in writing that she does not want her maternity/additional maternity leave to resume on her first day of absence she will be entitled to avail of sick pay or Illness Benefit (if applicable). However, she will not be entitled to the remainder of the untaken maternity/additional maternity leave.

The **Paternity Leave and Benefit Act 2016** provides for the postponement of transferred paternity leave in the event of hospitalisation of the child.⁸

The **Parent's Leave and Benefit Act 2019** provides for the postponement of transferred parent's leave in the event of hospitalisation of the child.⁹

4.4 Maternity Leave and Fixed Term Contracts

Women employed under fixed-term contracts (including members of a local authority) may not be entitled to the full period of maternity leave or additional maternity leave if their contract ends while they are still on maternity leave, as their maternity/additional maternity leave will also end

⁶ Section 14B

⁷ Section 7

⁸ Paternity Leave and Benefit Act 2016, Section 15(6)

⁹ Parent's Leave and Benefit Act 2019, Section 16(7)

on the same day. The expiry of an employee's contract of employment during maternity leave will not affect her entitlement to Maternity Benefit.

Example 2

Jane O'Sullivan is due to go on maternity leave 4 weeks before her fixed term contract is due to end. When does her maternity leave end?

Solution 2

Her maternity leave ends after the expiry of the 4 weeks when her fixed term contract comes to an end.

4.5 Late Births

Where an employee is absent on maternity leave, but has less than 4 weeks maternity leave (excluding additional maternity leave) left when her baby is born, her maternity leave may be extended so that she is still entitled to 4 weeks maternity leave remaining following the week of the birth. The maximum extension is 4 weeks. An employee must notify her employer in writing, advising of the length of any extension to maternity leave. In these circumstances Maternity Benefit payable by the DSP will continue to be paid to the individual until the baby is 4 weeks old. The individual should notify the Maternity Benefit Section of the DSP by sending a letter from her doctor stating the date on which the baby was born to qualify for the extended payment.

This rarely applies in practice, considering most women take the minimum period of maternity leave prior to the birth (2 weeks) and retain the majority of their maternity leave until after the baby is born.

4.6 Early Births

Where a birth occurs prior to the commencement of maternity leave, a female employee is entitled to take 26 weeks maternity leave from the date of the birth which can be extended by the premature birth period.

If the baby is born prior to the employee having notified her employer of her intention to take maternity leave, maternity leave commences from the date of birth and the employee must notify her employer within 14 days following the birth. Where the employee complies with this notice requirement, she will be deemed to have complied with the provision requiring the employee to give 4 weeks' notice to her employer of her intention to take maternity leave.

4.7 Still Births

In the event of a stillbirth occurring after the 24th week of pregnancy, the mother is entitled to 26 weeks maternity leave and the extended maternity leave equal to the duration of the premature birth period (and to claim Maternity Benefit from the DSP) and the additional maternity leave. Where a miscarriage/stillbirth occurs before the 24th week of pregnancy the mother has no entitlements under maternity protection legislation, however she may be entitled to claim Illness Benefit or have an entitlement under a company sick pay scheme.

4.8 Time off Work

A pregnant employee is entitled to paid time off work for the purpose of receiving ante-natal care (i.e. doctor & hospital appointments), and for one set of ante-natal classes (other than the last three classes in a set), during normal working time.¹⁰ Presumably, it was intended that the

¹⁰ Section 8 of Maternity Protection (Amendment) Act 2004

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expectant mother would attend the last 3 classes while on pre-confinement maternity leave. ‘Normal working time’ does not include overtime, where the employee has worked less than 20 hours’ overtime in the last month.

This time off work is granted subject to written notification of medical or related appointments/classes, being provided to the employer, at least 2 weeks in advance. This provision does not apply to the first medical appointment relating to the pregnancy. If the appointment is urgent, the employee notification may be provided up to 1 week after the appointment. There is no maximum or minimum amount of time off specified for these visits and an employee is therefore entitled to as much time off as is necessary to attend each visit, to include travel to and from the appointment.

An employee who has returned to work after the birth of her child, is entitled to paid time off for post-natal care arising during the 14 weeks following the birth, and must give 2 weeks’ notice of any such appointments to her employer. This will rarely apply, considering the majority of mothers take their full entitlement to maternity leave and are still absent on maternity leave during the 14 weeks after the birth of their child.

An employer cannot insist that an employee take annual leave to go to an ante-natal or post-natal medical appointment, and maternity leave or ante-natal visits must not be counted as part of an employee’s sick leave record.

If a pregnant employee is unable to attend one full set of ante-natal classes (other than the last 3 classes in a set) during her pregnancy, due to circumstances beyond her control, including miscarriage, the premature birth of the baby or the illness of the employee, she is entitled to paid time off to attend the classes (other than the last 3 classes in a set) during one or more subsequent pregnancies.

The entitlement to paid time off work to attend one set of ante-natal classes does not apply to members of the Defence Forces on active service or members of the Gardaí performing their duties outside the State.

4.9 Breastfeeding Breaks

The Acts make provision for breastfeeding mothers, who have given birth within the previous 26 weeks, to an entitlement, without loss of pay, to breastfeeding breaks or a reduction in working hours.¹¹ This entitlement ceases on the 26th week following the week of the birth of the baby. These breaks can be of one hour per day in the form of one break of 60 minutes, two breaks of 30 minutes each, three breaks of 20 minutes each or to a number and duration of breaks as may be agreed by her and her employer, where breastfeeding facilities are provided by the employer in the workplace. An employer is not required to provide facilities for breastfeeding in the workplace, if it would give rise to a cost, (other than a nominal cost) to the employer. The provision of a fridge for the storage of expressed milk would be deemed a nominal cost.

Alternatively, where the employer does not provide breastfeeding facilities, a breastfeeding mother is entitled to a reduction of working hours (without loss of pay) of one hour per day in the form of one period of 60 minutes, two periods of 30 minutes each, three periods of 20 minutes each, which may be agreed by her and her employer for the purpose of breastfeeding outside the workplace.

¹¹ Section 9

Breastfeeding means either actual breastfeeding or expressing breast milk and feeding it to a child immediately, or storing it for the purpose of feeding it to the child at a later time.

Breastfeeding breaks should be calculated on a pro-rata basis for part-time employees. An employee must inform her employer in writing of her intention to take breastfeeding breaks at least 4 weeks prior to returning to work. An employer may request the birth certificate of the child concerned to confirm the child's date of birth. An employee must also notify her employer when she ceases to breastfeed.

The **Work Life Balance and Miscellaneous Provisions Act 2023** provides for an extension of the timeframe in which breastfeeding mothers can avail of breastfeeding breaks from 26 weeks following the birth to 2 years following the birth. This Act is subject to a Commencement Order which was not signed at the time of going to print.

5. Maternity Benefit Entitlement

Maternity Benefit is paid by the DSP to an employee or a self-employed woman for the duration of the 26 weeks of maternity leave and, if applicable, the extended maternity leave equal to the premature birth period, provided she satisfies certain PRSI contribution conditions. The PRSI contribution classes which qualify for Maternity Benefit are **Classes A, E and H for employees and Class S for self-employed individuals**. However, Maternity Benefit is not payable to serving members of the Defence Forces.

Maternity Benefit is payable to an employee who satisfies the following conditions:

- Is in insurable employment immediately before the first day of her maternity leave, (the last day of insurable employment must be within 16 weeks of the end of the week in which her baby is due. If the employee ceases employment during the 16 week period prior to the week in which the baby is due, her maternity leave must commence from the following day), **and**
- Is certified by her employer as being entitled to maternity leave, **and**
- Has her expected date of confinement certified by a registered medical practitioner, **and**
- Has at least 39 weeks paid PRSI contributions in the 12 month period before the first day of maternity leave, **or**
- Has at least 39 weeks paid PRSI contributions since first starting work *and* at least 39 weeks paid or credited PRSI contributions in the *relevant tax year* or in the year following the relevant tax year, **or**
- Has at least 26 weeks paid PRSI contributions in the relevant tax year *and* at least 26 weeks paid PRSI contributions in the tax year prior to the relevant tax year.

Maternity Benefit is payable to a self-employed contributor who has:

- 52 weeks paid contributions in the relevant tax year, **or**
- 52 weeks paid contributions in the tax year immediately before the relevant tax year, **or**
- 52 weeks paid contributions in the tax year immediately following the relevant tax year.

The *relevant tax year* is the second last income tax year i.e. if maternity leave commences in 2023 the relevant tax year is 2021.

If a person is self-employed but was in insurable employment before becoming self-employed, the PRSI contributions (Class A, E and H) in that employment may help her to qualify for

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Maternity Benefit if she does not satisfy the self-employment conditions as stated above. The same applies for people who were previously self-employed and are now employees.

Case Law: Sharda Sobhy v Minister for Employment Affairs and Social Protection, Ireland and the Attorney General (2021) IESC 81

In a Supreme Court judgement in 2021, it was held that as the employee had been illegally working in Ireland (as she did not hold a valid work permit), she was not entitled to claim Maternity Benefit, although she had PAYE, USC and PRSI deducted from her wages for a number of years. The Department contended that the Employment Permits Act 2003 made it illegal to work in the State without a work permit and it was a criminal offence for both the employer and employee to engage in the employment. The key question for the Court to decide upon, was whether the employee's employment was an insurable employment. The Court held that the employee's contract was illegal and did not qualify as a contract of service for social welfare purposes

Example 3

Mary commenced employment for the first time in January 2021 and had a number of periods since then when she was unemployed. She commenced maternity leave on 13th March 2023. Her Class A PRSI contribution history is as follows:

Year	No. of weeks	Period of Employment
2021	43 weeks	January to October
2022	27 weeks	July to December
2023	<u>10 weeks</u>	January to March
	80 weeks	

Does she qualify for Maternity Benefit?

Solution 3

(a) 39 weeks paid PRSI contributions in the 12 month period before leave commences (i.e. 13th March 2022 to 12th March 2023)

2022	27 weeks (Actual weeks worked)
2023	<u>10 weeks</u>
Total	37 weeks

Mary does not meet this requirement, so we must examine the alternative method of determining whether or not she qualifies for Maternity Benefit.

(b) 39 weeks paid PRSI contributions since first starting work and 39 weeks paid or credited PRSI contributions in the relevant tax year before leave commences:

Since first starting work	80 weeks
Relevant Tax Year	43 weeks

Mary now meets the requirements to qualify for Maternity Benefit.

Employees can apply for Maternity Benefit using an MB1 Form which should be completed by the employee and submitted to the Maternity Benefit Section of the DSP at least 6 weeks before the commencement of maternity leave.

The employer should complete an MB2 Form confirming the start date and end date of the employee's maternity leave and the employee's expected due date. The employer's bank details should be included where the employee authorises that the Maternity Benefit can be paid to her employer.

If the person is self-employed or has recently become unemployed, she must complete an MB1 Form and an MB3 Form must be completed by her doctor.

With regard to a premature birth, in order to bring forward the start date of Maternity Benefit, a letter from the hospital confirming the baby's actual date of birth will need to be submitted to the Maternity Benefit Section. This letter should confirm the actual date of birth and the number of weeks gestation at which the baby was born in order for the DSP to calculate the total duration of the Maternity Benefit.

The MB1, MB2 and MB3 Forms are available at: <https://www.gov.ie/en/service/apply-for-maternity-benefit/#apply>. Applications for Maternity Benefit can also be made online using www.mywelfare.ie in which case the supporting forms or letters can be uploaded to accompany the application.

It should be noted that a female employee can currently take a minimum of 2 weeks and a maximum of 22 weeks maternity leave before the end of the week in which her baby is due, however, for Maternity Benefit purposes, a minimum of 2 weeks and a maximum of 16 weeks maternity leave must be taken before the end of the week of confinement i.e. the individual must be at least 24 weeks pregnant before Maternity Benefit commences. Failure to take the minimum of 2 weeks before the end of the expected week of confinement will result in a proportional loss of benefit. In the event of a premature birth or a stillbirth occurring after the 24th week of pregnancy, Maternity Benefit is payable from the date of the birth or stillbirth, however a medical certificate confirming this fact may be required by the DSP.

Maternity Benefit is paid by electronic transfer into a current or deposit account in a financial institution on a weekly basis, in advance, on a Monday. Employees who wish to take the minimum 2 week period of maternity leave prior to the birth, should commence maternity leave on the Monday prior to the week in which the baby is due. If an employee commences maternity leave on any day other than a Monday, they will get a pro-rata payment for the first and last week. Maternity Benefit is payable from Monday to Saturday, it is not payable for Sundays.

Where maternity leave and/or additional maternity leave is postponed in the event of hospitalisation of the child and Maternity Benefit has been paid for at least 14 weeks, payment of the balance of Maternity Benefit may be postponed upon receipt of written notification from the mother. The maximum period of postponement is 6 months. Payment will resume following written notification of the discharge of the child from hospital and will continue until the entitlement to the benefit ends.

If an individual was previously in insurable employment in another EU country, she may combine her social insurance record in that country with her Irish PRSI contributions in order to qualify for Maternity Benefit in Ireland. In order to qualify in this regard she must have paid at least one PRSI Class A contribution in Ireland in the 16 week period preceding the week in which the baby is due.

A person who cannot meet the required number of PRSI contributions in order to qualify for Maternity Benefit may still take maternity leave.

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An individual will be disqualified from receiving Maternity Benefit if, during the period for which Maternity Benefit is payable, she engages in any form of insurable employment or self-employment, other than domestic activities in her own household; or fails without good reason to attend for medical examinations.

5.1 Rate of Maternity Benefit

Maternity Benefit is calculated as being the higher of:

- The weekly rate of Illness Benefit (including increases for qualified adults and qualifying children) which would be paid to the claimant if she was absent from work through illness or,
- €262 per week (€250 per week prior to 2nd January 2023).

Half the rate of Maternity Benefit is payable if an employee is in receipt of any of the following payments:

- One Parent Family Payment,
- Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension,
- Widow's, Widower's or Surviving Civil Partner's (Non-Contributory) Pension, or
- Death Benefit by way of Widow/Widower's, Surviving Civil Partner or Dependent Parent's Pension (under the Occupational Injuries Scheme).

6. Health and Safety Leave

The Maternity Protection Acts provide for health and safety leave to be granted to:¹²

- A pregnant woman, or
- A woman who has given birth within the previous 14 weeks, or
- A woman who is breastfeeding up to 26 weeks after the birth

if the **Safety, Health and Welfare at Work Acts 2005 to 2014** require it.

The **Safety, Health and Welfare at Work Acts 2005 to 2014** require an employer to carry out a risk assessment as to the health and safety of the employee concerned, where an activity at the employee's place of work is likely to expose her to hazardous working conditions.

If a risk is established, the employer must put measures in place to remove the risk, or alternatively, the employee must be granted suitable alternative work. This includes changing the employee from night work to daytime work if it is medically certified for the safety or health of that employee. If it is not possible for the employer to remove the risk or grant alternative work, the employee must be granted health and safety leave.

A Health and Safety Certificate must be provided to the employee by the employer, if requested, which must state the reason why the leave is being granted, the commencement date and length of the leave. The DSP may require this certificate in order for the employee to receive Health and Safety Benefit. *A copy of a Health and Safety Certificate is available at the end of this chapter.*

An employee, who is granted health and safety leave by her employer, must be paid her usual wages by her employer, for the first 21 days of such leave i.e. 3 weeks basic pay, excluding any

¹² Part III of Maternity Protection Act 1994

overtime payments. From day 22 onwards, the employee may be entitled to Health and Safety Benefit from the DSP.

Health and safety leave ends for:

- Pregnant employees, when there is no longer a risk, when alternative work becomes available, or on the commencement of maternity leave, or
- Women who have recently given birth, on the 14th week following the birth, or
- A breast-feeding mother, when she ceases to breast-feed her child, or on the 26th week following the birth of her child, whichever is earlier, or
- Fixed term employees, the date the contract ends, if earlier than any of the above.

Case Law: James Coffey and Dame Street Hair Studios v Byrne

An employee became pregnant and was out sick. Her doctor advised her that it would be detrimental given her working conditions for her to return to work. She maintained that she had to work long hours standing, the staff room was small and unventilated, with no hot water, ventilation was poor overall and she had suffered from asthma and chest infections. The employee obtained the necessary forms for health and safety leave, but the employer refused to sign them. The employer was requested to carry out a risk assessment but this was not carried out. The employee was awarded compensation of €3,432.10 (£2,703).

6.1 Compliance Notice

An Inspector of the Workplace Relations Commission can issue a Compliance Notice under the **Maternity Protection Acts 1994 to 2022** where an employer is in breach of the health and safety leave provisions as outlined above for pregnant employees or employees who have recently given birth.¹³ See the Introduction to Employment Law chapter for further information on Compliance Notices.

7. The Father's Entitlement

A father also has a once-off entitlement to paid time off to attend the 2 ante-natal classes immediately prior to the birth of the child. This time off is subject to written notification to the employer at least 2 weeks in advance.

The **Paternity Leave and Benefit Act 2016** provides an entitlement for a father to take 2 week's paternity leave during the first 26 weeks following the birth of his child.

The **Parent's Leave and Benefit Act 2019** provides an entitlement for a father to take 7 weeks parent's leave during the first 2 years following the birth of his child.

In the event of the mother's death occurring during her maternity leave or additional maternity leave; in addition to his paternity or parent's leave entitlement, the father is entitled to take the outstanding balance of maternity leave (with Maternity Benefit if he satisfies the PRSI contribution requirements) and additional maternity leave from his employment. Leave to which the father is entitled must begin within 7 days of the mother's death.

If the mother's death occurs while the father is on paternity leave, he can commence taking the balance of the deceased mother's maternity and additional maternity leave following his paternity leave. If the mother's death occurs prior to the father taking his paternity leave, he can commence

¹³ Workplace Relations Act 2015, Section 28 and Schedule 4

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taking the balance of the mother's maternity leave followed by his paternity leave, then followed by the balance of the deceased mother's additional maternity leave, as applicable.

If the mother's death occurs while the father is on parent's leave, he can commence taking the balance of the deceased mother's maternity and additional maternity leave following his parent's leave. If the father has not yet availed of his paternity leave, it can be taken between the maternity and additional maternity leave.

If the mother's death occurs prior to the father taking his parent's leave, he can commence taking the balance of the mother's maternity leave, followed by his paternity leave (if not utilised), followed by the balance of the deceased mother's additional maternity leave, followed by his parent's leave, as applicable.

The payment of Maternity Benefit to the father may be based on either his own PRSI contributions or on the deceased mother's PRSI contributions. Assuming he qualifies, the father is entitled to Maternity Benefit for the remaining period of maternity leave (including extended maternity leave due to a premature birth, if applicable) subject to a minimum period of at least 6 weeks. For example, assuming the baby was not born prematurely, if the mother's death occurred on the 10th week following the birth (i.e. week 12 in total, 2 weeks before the birth and 10 weeks after the birth), the father would be entitled to claim Maternity Benefit for the remaining 14 weeks up the 26th week. However, if the mother's death occurred on the 23rd week following the birth the father would be entitled to Maternity Benefit for a minimum period of 6 weeks.

It is important to note that a father must notify his employer in writing no later than the day the leave commences, of the death of the mother and produce a copy of the death certificate of the mother and the birth certificate of the child, if requested by his employer, in order to qualify for the balance of the deceased mother's maternity and/or additional maternity leave.

8. Employment Protection¹⁴

An employee's statutory and contractual employment rights, other than the right to pay, are protected during any period of maternity leave. This also applies to a father who is entitled to take the balance of maternity leave on the death of the mother. An employee will continue to accrue pensionable service while absent on maternity leave.

An employee is not entitled to be paid during any period of maternity leave unless it is stated in her contract of employment. If she is paid by her employer she may be required to pay employee contributions into the pension scheme. If she is not paid by her employer during maternity leave, whether or not the employer continues to pay contributions to a defined contribution pension scheme or Personal Retirement Savings Account (PRSA) depends on the employee's terms of employment.

An employee's statutory and contractual employment rights, other than the right to pay or pension benefits, are also protected during any period of additional maternity leave. This also applies if the father takes additional maternity leave on the death of the mother. While an employer is not obliged to pay an employee during additional maternity leave, if the employee is paid, this period will be regarded as pensionable service and the employee may be required to make a pension contribution. If the employee is unpaid during additional maternity leave, whether the employee will accrue pension benefits or not, will depend on the rules of the employer's pension scheme.

¹⁴ Part IV of Maternity Protection Acts

A female employee is entitled to be paid by her employer for the first 21 days of health and safety leave. While a female employee accrues annual leave while absent on health and safety leave, she does not accrue public holiday entitlements.

An employee's statutory and contractual employment rights including pay and pension rights are protected during breastfeeding breaks, absences due to ante-natal classes or appointments.

Employees accrue annual leave and public holiday entitlements (except during health and safety leave) during absences (as outlined above) relating to maternity leave and these absences are counted as reckonable service for redundancy purposes and do not break an employee's continuous service.

Example 4

Ann O'Brien's annual leave entitlement is 20 days. Ann commenced maternity leave on 27th February and is due to return to work after 26 weeks on 28th August. She contacts her employer during July to advise him that she intends to take the 16 weeks additional maternity leave, which means that she will not be returning to work until 18th December. She has not been paid while on maternity leave and did not take any annual holidays prior to going on maternity leave. On return to work, she enquires about her annual leave and public holiday entitlements which accrued during her maternity leave.

Solution 4

Annual Leave:

As she has not taken any annual leave prior to the commencement of maternity leave, she will be entitled to her full annual leave of 4 working weeks.

Public Holidays:

She also accrues her public holiday entitlement for the following public holidays which arose during her maternity leave and additional maternity leave:

<i>St. Patrick's Day</i>	<i>First Monday in June</i>
<i>Easter Monday</i>	<i>First Monday in August</i>
<i>First Monday in May</i>	<i>Last Monday in October</i>

Dismissal for reasons related to pregnancy, birth, maternity leave or related matters, is automatically deemed an unfair dismissal under the **Unfair Dismissals Acts 1977 to 2015**. An employee who is on maternity leave, cannot be dismissed, made redundant or suspended while on such leave. Notice of any kind of dismissal or redundancy cannot be given to an employee while that employee is on maternity leave.

However, there is nothing in the **Maternity Protection Acts 1994 to 2022** which prevents an employee leaving her employment while on maternity leave or additional maternity leave.

8.1 Income Tax, PRSI and USC Implications

An employer is not obliged to pay an employee during maternity leave or additional maternity leave, transferred paternity leave, a father's entitlement or after the first 21 days of health and safety leave, unless such payment is provided for in the employee's contract of employment. If the employee is not paid, she will not be deemed to be an employed contributor for PRSI purposes for those weeks.

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Regardless of whether or not an employee is paid by her employer while on maternity leave she is entitled to claim Maternity Benefit from the DSP assuming she meets the qualifying PRSI contribution requirements. As mentioned previously, an employee may also qualify for Health and Safety Benefit when absent on health and safety leave.

When a female employee is on maternity leave she will automatically receive credited PRSI contributions from the DSP while Maternity Benefit is being claimed i.e. for the 26 weeks of maternity leave (or any extended leave due to a premature birth). Credited contributions are also awarded to a woman for any week she is in receipt of Health and Safety Benefit. However, where an employee does not qualify for Maternity Benefit, she will still receive a credited PRSI contribution for each week she is on leave provided the DSP receive a letter, on headed paper, signed by the employer, stating the dates the employee was absent on maternity leave.

If a female employee takes any, or all, of the additional maternity leave, she is also entitled to credited PRSI contributions for that period. An application for maternity leave credits is available at: <http://www.gov.ie/en/service/apply-for-maternity-benefit#apply>. The form should be completed by the employer on the employee's return to work and submitted to the Maternity Benefit Section of the DSP. Otherwise she will not be granted the credited PRSI contributions for the additional maternity leave and this may affect her entitlement to DSP benefits at a future date.

Maternity Benefit and Health and Safety Benefit are taxable sources of income, but they are not liable to PRSI and USC.

Revenue tax these benefits via the PAYE system by reducing the employee's SRCOP and tax credits, on receipt of information from the DSP. The taxation of Maternity Benefit is covered in detail in the Chapter entitled "Taxation of Short-Term Social Insurance Benefits".

Where an employer pays full or partial (top up) salary to an employee while she is on maternity leave; Income Tax, PRSI and USC should only be applied to the amount of salary actually paid by the employer. Whether the Maternity Benefit is retained by the employee, or mandated to the employer's bank account, it is disregarded for tax purposes. Where the Maternity Benefit was mandated to the employer's bank account, it can be repaid tax free to the employee through payroll. The employer should operate Income Tax and USC based on the latest Revenue Payroll Notification (RPN) received from Revenue, which may be issued on the Week 1 Basis.

8.2 Right to Return to Work

Maternity leave is not dependent on an employee returning to work, and an employee who intends to return to work, must give formal written notice of that intention at least 4 weeks before her maternity leave or additional maternity leave is due to end.¹⁵ In exceptional circumstances an Adjudication Officer or the Labour Court may extend the time limit for giving notice of intention to return to work.

An employee should return to her old job, or one equivalent in grade and location. If this is not possible, an employee is entitled to 'suitable alternative work', based on the place of employment, terms of work and rates of pay. It should also be noted that employees are entitled to all rights under this Act, whether or not they intend to return to work.

¹⁵ Section 26 of Maternity Protection Act 1994

Where an employee informs her employer that she will not be returning to work after the expiry of maternity leave or additional maternity leave, it is best practice for the employer to request a written letter of resignation from the employee confirming the date she wishes to leave her employment. An employer should not assume that the date of leaving occurs before the date the employee is due to return to work, unless otherwise stated in a resignation letter.

Case Law: Butler v Smurfit Ireland Ltd T/A Paclene Co. Ltd.

An employee had originally worked as an accounts clerk and on her return to work was offered the position of receptionist. She did not want to work as a receptionist and resigned her employment. The Employment Appeals Tribunal awarded her €10,157.90 (£8,000).

9. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled “Introduction to Employment Law”. An employee may refer a dispute under the **Maternity Protection Acts 1994 to 2022** to the Workplace Relations Commission (WRC) for adjudication by an Adjudication Officer.

The complaint must be made within 6 months from the date that the employer is informed that the employee is either pregnant, has recently given birth or is breastfeeding.

In the case of a complaint by an employee who is an expectant father, the complaint must be made within 6 months from the date the expectant father informs his employer that the expectant mother is pregnant.

In the case of a complaint by an employee who is the father of the child who has already been born, the complaint must be made within 6 months from the date on which the father’s employer is informed that the child’s mother has died.

These time limits may be extended to 12 months if the Adjudication Officer is satisfied that the reason for the delay was due to reasonable cause.

Where the complaint is upheld, the Adjudication Officer will issue a determination, which shall do one or more of the following:¹⁶

- Grant leave to the employee for a specific period,
- Award compensation that is just and equitable, but not exceeding 20 weeks’ pay, or
- An award of leave and compensation.

Pay includes allowances in the nature of pay and benefits in lieu of or in addition to pay.

Disputes related to dismissal must be referred under the **Unfair Dismissals Acts 1977 to 2015** and disputes that relate to specific health risks in the workplace, must be referred to the Health and Safety Authority.

An employer may also refer a dispute regarding an employee’s entitlements under this Act to the WRC.

The provisions in the Act regarding an employee’s right to return to work and right to make a complaint to the WRC do not apply to members of a local authority.

¹⁶ Section 32 as amended by the Workplace Relations Act 2015

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Health and Safety Certificate

(I) EMPLOYEE DETAILS	
Name: _____	PPSN: _____
Employee's Occupation: _____	
The employee named above has notified me that:	<input type="checkbox"/> she is pregnant <input type="checkbox"/> she has recently given birth <input type="checkbox"/> she is breastfeeding
Is employee employed under a fixed term contract?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If Yes, state date contract ends	_____
(II) CERTIFICATION OF RISK	
Please complete either (a) workplace risk or (b) nightwork risk	
(a) The following risk(s) to the employee named above has/have been identified arising from a risk assessment undertaken in accordance with Regulations under the Safety, Health and Welfare at Work Act 1989.	
List risk(s) _____	
Specify the reasons why it is not possible to eliminate the risk(s): _____	
(b) The employee named above is required to perform nightwork (i.e. work between the hours of 11pm and 6am where the employee normally works at least 3 hours in the said period or at least 25% of her monthly working time in that period) and the medical registered practitioner named below has certified that the performance of night work poses a risk to the employee's health/safety and furthermore it is not feasible to transfer the employee to daywork.	
Name of medical registered practitioner: _____	
(III) CERTIFICATION OF NON-FEASIBILITY OF OTHER WORK AND THE GRANTING OF LEAVE	
As a result of the risk(s) identified above and, arising from Regulations on Safety, Health and Welfare at Work (Pregnant Employees, etc.) and the Maternity Protection Act, 1994 for the reason(s) indicated as applying below the employee has been granted leave on health and safety grounds because:	
(i) It is not technically or objectively feasible to move the employee	<input type="checkbox"/>
(ii) such a move cannot be required on duly substantiated grounds	<input type="checkbox"/>
(iii) the other work proposed for the employee is not suitable for her	<input type="checkbox"/>
(IV) HEALTH AND SAFETY CERTIFICATE	
Date of commencement of leave on health and safety grounds	_____
Expected duration of leave (in weeks):	_____
Expected date or date of confinement as appropriate	_____
Date of last day of 21 days health and safety leave during which payment by employer applies	_____
(V) DECLARATION	
I/We declare that the details given above are true and complete.	_____
I/We undertake to inform the DSP immediately in the event of notifying the employee to return to work where:	_____
– the risk to the employee no longer exists	_____
– other work becomes available for the employee	_____
Signed by or on behalf of Employer:	Employer Name _____
Position _____	Address: _____
Day Month Year _____	Employer's Registered Number _____
Telephone Number _____	Date _____
EMPLOYER'S OFFICIAL STAMP	

CHAPTER 43

Adoptive Leave Acts 1995 and 2005

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Adoptive Leave and Additional Adoptive Leave**
 - 4. Adoptive Benefit Entitlement**
 - 5. Employment Protection**
 - 6. Redress Provisions**
-

1. Main Provisions

The **Adoptive Leave Act 1995**, as amended by the **Adoptive Leave Act 2005** and the **Family Leave and Miscellaneous Provisions Act 2021**, provides:

- For adoptive leave, with protection of employment, for employees. An employee is entitled to a minimum of 24 consecutive weeks' adoptive leave and an optional 16 weeks' additional adoptive leave.
- That adopting couples (including same sex couples) can choose which parent avails of adoptive leave. The parent who avails of adoptive leave is known as the qualifying adopter.

The **Paternity Leave and Benefit Act 2016** provides that paternity leave and benefit is available to the parent who is not availing of adoptive leave. This must be taken during the first 26 weeks following the date of placement of the child.

The balance of paternity leave not taken by this parent may be transferred to the qualifying adopter where the parent dies before the end of the 28th week following the date of the placement. This is known as “transferred paternity leave”.

The **Parent's Leave and Benefit Act 2019** provides an entitlement for 7 weeks parent's leave and benefit to each parent in the couple. This must be taken during the first 2 years following the date of placement of the child. Where a relevant parent dies within 2 years of the date of placement without having availed of all or part of their parent's leave, the balance of parent's leave not taken may be transferred to the other parent. This is known as “transferred parent's leave”.

2. Covered Employees

The Act covers all qualifying adopters who are in employment. The Act also covers employed surviving parents in the event of the qualifying adopter's death occurring following the adoption during the period of adoptive or additional adoptive leave.¹

¹ Section 6

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A **qualifying adopter** means:

- where a child is placed or to be placed, in the care of a couple (of whom neither is the mother or father of the child), either person as nominated by the couple, assuming that nominated person is an employee.
- A sole adopter in the case of a person (male or female) who adopts a child on their own, assuming that person is an employee and is not a surviving parent.²

A **surviving parent** is an employee who is the surviving spouse, civil partner or cohabitant of the qualifying adopter where the qualifying adopter has died.

An **adopting parent** is a qualifying adopter or surviving parent.

Example 1

Adam and Josh are married and have been approved for adoption. A child is due to be placed in their care in the coming weeks. The couple have decided that Josh will avail of adoptive leave. Hence, Josh will be regarded as the qualifying adopter and entitled to avail of adoptive leave and additional adoptive leave. Adam would be entitled to avail of paternity leave.

If Adam died before the 28th week following the date of placement, any paternity leave and benefit not taken by him can be transferred to Josh. Transferred paternity leave is covered in more detail in the Chapter entitled Paternity Leave and Benefit Act 2016.

If either of them died within 2 years of the date of placement, any parents leave and benefit not taken by the deceased may be transferred to the other parent. Transferred parent's leave is covered in more detail in the chapter entitled Parent's Leave and Benefit Act 2019.

If Josh died during his adoptive leave or additional adoptive leave, Adam would then be regarded as the surviving parent and entitled to the balance of adoptive leave and additional adoptive leave not taken by Josh. This is covered in more detail below.

3. Adoptive Leave and Additional Adoptive Leave

A qualifying adopter is entitled to a minimum of 24 consecutive weeks adoptive leave beginning on the date of placement of the child, and to an optional 16 weeks' additional adoptive leave.

A qualifying adopter must give his or her employer at least 4 weeks written notice of the expected date of placement of the child, and confirm this as soon as possible. A certificate of placement which is available from the Adoption Authority of Ireland or the Health Service Executive (HSE) which arranged the placement, must be given to the employer no later than 4 weeks after the date of placement.³

In the case of foreign adoptions, an eligible employee must give her employer a copy of the declaration of eligibility and suitability, issued pursuant to the **Adoption Act 2010**, before the start of adoptive leave. The employee must also give an expected date of placement. Particulars of placement must be furnished to the employer as soon as possible thereafter. A foreign adoption occurs where a child is adopted from a country outside the State of Ireland and where the Irish adoptive parents take on all parental rights and duties to the child.

² Section 2, as amended by the Family Leave and Miscellaneous Provisions Act 2021

³ Section 7

If the date of placement is postponed, the commencement of the period of adoptive leave shall be postponed, subject to the qualifying adopter notifying the employer of the expected new date of placement, as soon as possible.

Adopting parents are entitled to time off during work hours without loss of pay to attend any pre-adoption meetings and classes with social workers/health board officials which they are required to attend during the pre-adoption process. Written notification of dates and times of classes should be supplied to the employer not later than 2 weeks before the dates of the classes. The employer is entitled to seek written confirmation of the dates and times of the classes.

An employee is not entitled to adoptive leave if they have availed of paternity leave under the **Paternity Leave and Benefit Act 2016**.

3.1 Additional Adoptive Leave

A qualifying adopter is entitled to 16 weeks additional adoptive leave which follows immediately after the 24 weeks adoptive leave ends.

Where the employee intends to take any or all of the 16 weeks additional adoptive leave, they must notify their employer in writing, at least 4 weeks prior to the commencement of the additional leave.

In the case of foreign adoptions, some or all of the additional adoptive leave may be taken prior to the date of placement to allow the qualifying adopter to go abroad for the purpose of getting to know the child. The qualifying adopter should give his or her employer at least 4 week's written notice of their intention to take some or all of the additional adoptive leave prior to the date of placement. The employee can change the dates by issuing a new notification to the employer. The period of additional adoptive leave ceases on the date of placement, at which point adoptive leave commences. The employee can take the balance of the additional adoptive leave immediately following their adoptive leave.

An adopting parent is entitled to terminate their additional adoptive leave in the event of illness of the adopting parent. The **Paternity Leave and Benefit Act 2016** also provides for the termination of transferred paternity leave in the event of sickness of the qualifying adopter.⁴

Employees must notify their employer in writing of their intention to terminate the additional adoptive leave/transferred paternity leave. As with any other absence due to illness, the employee may be entitled to Illness Benefit or payment from an employer's sick pay scheme, if applicable. If the employee opts to terminate his or her additional adoptive leave/transferred paternity leave, they forfeit their entitlement to the outstanding balance of additional adoptive leave/transferred paternity leave.

3.2 Postponement of Adoptive Leave or Additional Adoptive Leave

Employees are entitled to request the postponement of their adoptive leave and/or additional adoptive leave in the event of the hospitalisation of the adopted child. This is subject to the agreement of their employer. Where the employer agrees to the postponement the employee shall return to work during this period of postponement. The period of the postponed leave, which must be taken as a continuous period, must recommence within 7 days of the child being discharged from hospital, or at a later date as may be agreed between the employee and the employer.

⁴ Paternity Leave and Benefit Act 2016, Section 15(6)

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The **Paternity Leave and Benefit Act 2016** provides for the postponement of transferred paternity leave in the event of hospitalisation of the child.⁵

The **Parent's Leave and Benefit Act 2019** provides for the postponement of transferred parent's leave in the event of hospitalisation of the child.⁶

3.3 Termination of Placement

Where the placement of a child with an adopting parent terminates before the expiration of the period of adoptive leave or additional adoptive leave to which the employee is entitled (as outlined above), the adopting parent is obliged to notify his or her employer in writing within 7 days.

Once the notification is received by the employer the employee may be required to return to work at a date that is suitable to the employer, which must not be later than the date the adoptive or additional adoptive leave would have expired.

This does not apply in the event of the death of the adopted child, in which case the adopting parent is entitled to avail of the full period of adoptive leave and additional adoptive leave.

In the case of foreign adoptions, where the qualifying adopter takes some or all of the additional adoptive leave before the date of placement, and no placement occurs, they must return to work on a date agreed with the employer which must not be later than the expiry of the period of additional adoptive leave notified to the employer.

3.4 Entitlement of Relevant Parent

In the event of the qualifying adopter's death occurring during his or her adoptive leave or additional adoptive leave; the relevant parent is entitled to take the outstanding balance of the qualifying adopter's adoptive leave (with Adoptive Benefit if the qualifying PRSI contribution conditions are satisfied) and additional adoptive leave, in addition to his or her paternity or parent's leave entitlement. Leave to which the relevant parent is entitled must begin within 7 days of the qualifying adopter's death.

If the qualifying adopter's death occurs while the relevant parent is on paternity leave, they can commence taking the balance of the deceased qualifying adopter's adoptive and/or additional adoptive leave following their paternity leave.

If the qualifying adopter's death occurs prior to the relevant parent taking his or her paternity leave, they can commence taking the balance of the deceased qualifying adopter's adoptive leave, followed by their paternity leave, then followed by the balance of the deceased qualifying adopter's additional adoptive leave, as applicable.

If the qualifying adopter's death occurs while the relevant parent is on parent's leave, the relevant parent can commence taking the balance of the deceased qualifying adopter's adoptive and additional adoptive leave following their parent's leave. If the relevant parent has not yet availed of his or her paternity leave, it can be taken between the adoptive leave and additional adoptive leave.

⁵ Paternity Leave and Benefit Act 2016, Section 15(6)

⁶ Parent's Leave and Benefit Act 2019, Section 16 (7)

If the qualifying adopter's death occurs prior to the relevant parent taking his or her parent's leave, the relevant parent can commence taking the balance of the deceased qualifying adopter's adoptive leave, followed by their own paternity leave (if not utilised), followed by the balance of the deceased qualifying adopter's additional adoptive leave, followed by their own parent's leave, as applicable.

The payment of Adoptive Benefit to the relevant parent on the death of the qualifying adopter, may be based on either their own PRSI contribution record or on the deceased qualifying adopter's PRSI contribution record. Assuming the relevant parent qualifies, they are entitled to Adoptive Benefit for the remaining period of adoptive leave subject to a minimum of 6 weeks. For example, if the qualifying adopter's death occurred on the 10th week following the placement, the relevant parent would be entitled to claim Adoptive Benefit for the remaining 14 weeks up to the 24th week. However, if the qualifying adopter's death occurred on the 23rd week following the placement, the relevant parent would be entitled to Adoptive Benefit for a minimum period of 6 weeks.

A relevant parent must notify his or her employer in writing no later than the day the leave commences, of the death of the qualifying adopter and, if requested by his or her employer, produce a copy of the death certificate of the qualifying adopter and the certificate of placement for the child, in order to qualify for the balance of the deceased qualifying adopter's adoptive leave and/or additional adoptive leave.

4. Adoptive Benefit Entitlement

Adoptive Benefit is paid by the DSP to an employee or a self-employed person on the commencement of the 24 weeks of adoptive leave, provided they satisfy certain PRSI contribution conditions. The PRSI Classes which qualify for Adoptive Benefit are **Classes A, E and H for employees and Class S for self-employed individuals**. However, Adoptive Benefit is not payable to serving members of the Defence Forces.

Adoptive Benefit is payable to an employee who satisfies the following conditions:

- Is in insurable employment that is covered by the **Adoptive Leave Acts 1995 and 2005** immediately before the first day of adoptive leave, and
- Has at least 39 weeks paid PRSI contributions in the 12 month period before the first day of adoptive leave, **or**
- Has at least 39 weeks paid PRSI contributions since first starting work *and* at least 39 weeks paid or credited PRSI contributions in the *relevant tax year* or in the year following the relevant tax year, **or**
- Has at least 26 weeks paid PRSI contributions in the relevant tax year *and* at least 26 weeks paid PRSI contributions in the tax year prior to the relevant tax year.

Adoptive Benefit is payable to a self-employed contributor who has:

- 52 weeks paid contributions in the relevant tax year, **or**
- 52 weeks paid contributions in the tax year immediately before the relevant tax year, **or**
- 52 weeks paid contributions in the tax year immediately following the relevant tax year.

The *relevant tax year* is the second last income tax year i.e. if adoptive leave commences in 2023 the relevant tax year is 2021.

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Where a person changes from being employed to self-employed, or conversely self-employed to employed, they will be entitled to Adoptive Benefit if they satisfy either the employee or self-employed PRSI qualifying conditions.

Example 2

Jane commenced employment for the first time in January 2020 and had a number of periods since then when she was unemployed. She commenced adoptive leave on 27th March 2023. Her Class A PRSI contribution history is as follows:

Year	No. of PRSI Contributions	Period of Employment
2020	52 weeks	January to December
2021	44 weeks	January to October
2022	25 weeks	July to December
2023	<u>12 weeks</u>	January to March
	133 weeks	

Does Jane qualify for Adoptive Benefit?

Solution 2

(a) 39 weeks paid PRSI contributions in the 12 month period before leave commences (i.e. 27th March 2022 to 26th March 2023)

2022	25 weeks (Actual weeks worked)
2023	<u>12 weeks</u>
Total	37 weeks

Jane does not meet this requirement, so we must examine the alternative method of determining whether or not she qualifies for Adoptive Benefit.

(b) 39 weeks paid PRSI contributions since first starting work and 39 weeks paid or credited PRSI contributions in the relevant tax year:

Since first starting work	133 weeks
Relevant Tax Year	44 weeks

Jane now meets the requirements to qualify for Adoptive Benefit.

If an individual was previously in insurable employment in another EU country, they may combine their social insurance record in that country with their Irish PRSI contributions in order to qualify for Adoptive Benefit in Ireland. In order to qualify in this regard, they must have paid at least one Class A PRSI contribution in Ireland in the 16 week period preceding the week of the expected date of placement.

A person who cannot meet the required number of PRSI contributions to qualify for Adoptive Benefit may still take adoptive leave.

A claimant is disqualified from receiving Adoptive Benefit if he or she engages in any form of insurable employment or self-employment during the period in which they are receiving Adoptive Benefit.

Adoptive Benefit is payable by electronic transfer into a current or deposit account in a financial institution and should be applied for by submitting a completed AB1 form to the Adoptive Benefit Section of the DSP at least 6 weeks before an employee intends to go on adoptive leave. The AB1 form is available at: <https://www.gov.ie/en/service/295b84-adoptive-benefit/#apply>

4.1 Rate of Adoptive Benefit

Adoptive Benefit is calculated as being the higher of:

- The weekly rate of Illness Benefit (including increases for qualified adults and qualifying children) which would be paid to the claimant if they were absent from work through illness or,
- €262 per week (€250 per week prior to 2nd January 2023).

A certificate of placement must be submitted to the DSP before Adoptive Benefit can be paid. Half the rate of Adoptive Benefit is payable if an employee is in receipt of any of the following payments:

- One Parent Family Payment,
- Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension,
- Widow's, Widower's or Surviving Civil Partner's (Non-Contributory) Pension, or
- Death Benefit by way of Widow/Widower's, Surviving Civil Partner or Dependent Parent's Pension (under the Occupational Injuries Scheme).

5. Employment Protection

A qualifying adopter's statutory and contractual employment rights, other than the right to pay, are protected during a period of adoptive leave. This also applies to a relevant parent who is entitled to take the balance of adoptive leave on the death of the qualifying adopter. An employee will continue to accrue pensionable service while absent on adoptive leave.

An employee is not entitled to be paid during adoptive leave unless it is stated in his or her contract of employment. If they are paid by their employer, they may be required to pay employee contributions into the pension scheme. If they are not paid by their employer during adoptive leave, whether the employer continues to pay contributions to a defined contribution pension scheme or PRSA depends on the rules of the scheme and the employee's terms of employment.

An employee's statutory and contractual employment rights, other than the right to pay or pension benefits, are also protected during any period of additional adoptive leave. This also applies if the relevant parent takes additional adoptive leave on the death of the qualifying adopter. While an employer is not obliged to pay an employee during additional adoptive leave, if the employee is paid, this period will be regarded as pensionable service and the employee may be required to make a pension contribution. If the employee is unpaid during additional adoptive leave, whether the employee will accrue pension benefits or not, will depend on the rules of the employer's pension scheme.

An employee's statutory and contractual employment rights are fully protected during absences from work to attend pre-adoption classes or meetings.

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Employees accrue annual leave and public holiday entitlements during all absences relating to adoptive leave and these absences are counted as reckonable service for redundancy purposes and do not break an employee's continuous service.

An employer cannot terminate an employee's employment during a period of adoptive leave or additional adoptive leave. Such a dismissal will be regarded as an unfair dismissal under the **Unfair Dismissals Acts 1977 to 2015**, unless there are substantial grounds justifying the dismissal. However, there is nothing in the **Adoptive Leave Acts 1995 and 2005** which prevents an employee leaving her employment while on adoptive leave or additional adoptive leave.

Example 3

Susan commenced adoptive leave on 13th March and is due to return to work after 24 weeks on 28th August. She contacts her employer during July to advise him that she intends to take 16 weeks additional adoptive leave, which means that she will not be returning to work until 18th December. She will not be paid while on adoptive leave and has already taken 5 days of annual leave at the beginning of the year. She has contacted you in the payroll department to query how many days she is entitled to in respect of annual leave and public holidays, which have accrued. Susan's annual leave entitlement is 20 days.

Solution 3

Annual Leave:

Susan's annual leave entitlement is 20 days as this accrues while she is on adoptive leave. She has taken 5 days of annual leave before commencing her adoptive leave. This leaves her with a balance of 15 days annual leave due to her.

Public Holidays:

She is entitled to be credited with the following public holidays which have arisen during her period of 24 weeks adoptive leave and the additional 16 weeks adoptive leave:

<i>St. Patrick's Day</i>	<i>First Monday in June</i>
<i>Easter Monday</i>	<i>First Monday in August</i>
<i>First Monday in May</i>	<i>Last Monday in October</i>

5.1 Income Tax, PRSI and USC Implications

An employee is not entitled to be paid by his or her employer while absent on adoptive leave unless such a term is included in the employee's terms and conditions of employment. If the employee is not paid during any week of adoptive leave or additional adoptive leave, they will not be deemed to be an employed contributor for PRSI purposes for those weeks.

Regardless of whether an employee is paid or not by their employer while on adoptive leave, they are entitled to claim Adoptive Benefit from the DSP assuming they meet the qualifying PRSI contribution requirements.

When an employee is on adoptive leave, they will automatically receive credited PRSI contributions from the DSP while Adoptive Benefit is being claimed (i.e. for the 24 weeks of adoptive leave). However, where an employee does not qualify for Adoptive Benefit, they will still receive a credited PRSI contribution for each week they are on leave provided the DSP receive a letter, on headed paper, signed by the employer, stating the dates the employee was absent on adoptive leave.

If an employee takes any, or all, of the additional adoptive leave, they are also entitled to credited PRSI contributions for that period. <https://www.gov.ie/en/publication/ba2c24-operational-guidelines-adoptive-benefit/#credits> An application form for adoptive leave credits should be completed by the employer on the employee's return to work and submitted to the Adoptive Benefit Section of the DSP. Otherwise they will not be granted the credited PRSI contributions for the additional adoptive leave and this may affect their entitlement to DSP benefits at a future date.

Adoptive Benefit is a taxable source of income, but it is not liable to PRSI and USC.

Revenue tax Adoptive Benefits through the PAYE system by reducing the employee's SRCOP and tax credits, on receipt of information from the DSP. The taxation of Adoptive Benefit is covered in detail in the Chapter entitled "Taxation of Short-Term Social Insurance Benefits".

Where an employer pays full or partial (top up) salary to an employee while they are on adoptive leave; Income Tax, PRSI and USC should only be applied to the amount of salary actually paid by the employer. Whether the Adoptive Benefit is retained by the employee, or mandated to the employer's bank account, it is disregarded for tax purposes in the employer's payroll. Where the Adoptive Benefit was mandated to the employer's bank account, it can be repaid tax free to the employee through payroll. The employer should operate Income Tax and USC based on the latest Revenue Payroll Notification (RPN) received from Revenue, which may be issued on the Week 1 Basis.

5.2 Right to Return to Work

Adoptive leave is not dependent on an employee returning to work, and an employee who intends to return to work must give formal written notice of that intention at least 4 weeks before their adoptive leave or additional adoptive leave is due to end.

An employee should return to their old job, or one equivalent in grade and location. If this is not possible, an employee is entitled to 'suitable alternative work', based on the place of employment, terms of work and rates of pay.

Where an employee informs their employer that they will not be returning to work after the expiry of adoptive leave or additional adoptive leave, it is best practice for the employer to request a letter of resignation from the employee confirming the date they wish to leave their employment. An employer should not assume that the date of leaving occurs before the date the employee is due to return to work, unless otherwise stated in a resignation letter.

6. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled "Introduction to Employment Law". An employee may refer a dispute under the **Adoptive Leave Acts 1995 and 2005** to the Workplace Relations Commission (WRC) for adjudication by an Adjudication Officer.

The complaint must be made within 6 months of the placement of the child. If no placement takes place the complaint must be made within 6 months from the date the employer received notification of the employee's intention to take adoptive leave.

In the case of a complaint by a relevant parent where the qualifying adopter has died the complaint must be made within 6 months following the date of death of the qualifying adopter.

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These time limits may be extended to 12 months if the Adjudication Officer is satisfied that the reason for the delay was due to reasonable cause.

Where the complaint is upheld, a decision of an Adjudication Officer may include:⁷

- Such directions as the Adjudication Officer considers necessary to resolve the dispute, and/or
- Compensation that is just and equitable, but not exceeding 20 weeks' pay.

Pay includes allowances in the nature of pay and benefits in lieu of or in addition to pay.

Disputes related to dismissal must be referred under the **Unfair Dismissals Acts 1977 to 2015** and disputes related to redundancy must be referred under the **Redundancy Payments Acts 1967 to 2022**.

An employer may also refer a dispute regarding an employee's entitlements under this Act to the WRC.

⁷ Section 32 as amended by the Workplace Relations Act 2015

CHAPTER 44

Paternity Leave and Benefit Act 2016

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Paternity Leave**
 - 4. Postponement of Paternity Leave**
 - 5. Surviving Parent's Entitlement**
 - 6. Paternity Benefit Entitlement**
 - 7. Employment Protection**
 - 8. Abuse of Paternity Leave**
 - 9. Records**
 - 10. Redress Provisions**
-

1. Main Provisions

The **Paternity Leave and Benefit Act 2016** provides for 2 consecutive weeks paternity leave with protection of employment for a relevant parent in respect of a child born or adopted on or after 1st September 2016. The Act also provides that paternity leave may be transferred to the surviving parent on the death of a relevant parent.

A **Relevant Parent** in relation to a child is defined as, a person (other than the mother of the child), who is:

- The father of the child, or
- A spouse, civil partner or cohabitant of the mother of the child, or
- In the case of a child who is, or is to be adopted, the spouse, civil partner or cohabitant, of the qualifying adopter of the child.

A Qualifying Adopter has the same meaning as it has in the Adoptive Leave Acts 1995 and 2005.

Note: Although a relevant parent in relation to a child can be either male or female, for the remainder of this chapter a relevant parent will be referred to as the father, or him.

2. Covered Employees

The Act covers employees who are relevant parents or a surviving parent from the first day of employment, including those who are working:

- Under a contract of service, whether full time, part time, permanent or fixed term, including civil servants, Gardaí and members of the Defence Force,
- As officers or servants of a local authority, Education and Training Boards, harbour authorities or the Health Service Executive (HSE),
- As apprentices, or

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- As ‘agency temps’- the person liable to pay the employee’s wages is deemed to be the employer.

3. Paternity Leave

Statutory paternity leave consists of 2 consecutive weeks leave to enable a father to provide care, or assist in the provision of care, for the child or provide support to the mother or adopting parent, or both. Paternity leave can be taken at any time commencing on the date of the birth (or placement in the case of an adoption) of the child and ending not later than 26 weeks after the date of birth or placement.¹

To exercise his right to paternity leave, an employee must give his employer 4 weeks’ written notice of his intention to take the leave. This notification must state the date the leave is due to commence **and** the date of return to work.

Where a father notifies his employer of his intention to take paternity leave to coincide with the expected date of birth, he should give a copy of the expectant mother’s medical certificate confirming her pregnancy and the expected week of confinement, as soon as reasonably practicable.

Where a father notifies his employer of his intention to take paternity leave during the 26 week period following the birth, he should provide the employer with a copy of the child’s birth certificate, as soon as is reasonably practicable.

An adoptive parent must give his employer a copy of the certificate of placement. Where an adoption is effected outside the State, the employee should provide his employer with a copy of the declaration of eligibility and suitability, as soon as reasonably practicable.

An employee can change the dates of his paternity leave by submitting a new notification to his employer, which will revoke any previous notification submitted.

In the event of a multiple birth or a multiple adoption, a father is still only entitled to 2 weeks paternity leave.

The expecting mother or qualifying adopter does not need to be in employment for the father to avail of paternity leave.

Paternity leave can only be taken by one parent in respect of a child, except in the case of an adoption, where a relevant parent is entitled to take paternity leave in respect of the adopted child, regardless of whether any other person availed of paternity leave for that child before the adoption occurred. A person who avails of adoptive leave (i.e. a qualifying adopter) cannot avail of paternity leave in respect of the same child, except on the death of their spouse, partner or cohabitant, in which case they may qualify for paternity leave as a surviving partner.

3.1 Early Births

Where the birth occurs 4 weeks or more before the expected date of birth and the father wishes to take his paternity leave to coincide with the birth and he has not yet notified his employer of his intention to take paternity leave, he must give his employer written notice of his intention to take paternity leave within 7 days of the date of birth, to comply with the Act.

¹ Section 8(1)

3.2 Late Births

Where the date of birth occurs later than anticipated, or the date of placement is postponed, and the father had previously notified his employer of his intention to take paternity leave, the father can select another date for his paternity leave to commence, as paternity leave cannot commence before the date of birth or placement.

3.3 Still Births

In the event of a stillbirth occurring after the 24th week of pregnancy, the father is entitled to take paternity leave (and to claim Paternity Benefit from the DSP). Where a miscarriage occurs before the 24th week of pregnancy the father has no entitlement to paternity leave.

3.4 Paternity Leave and Fixed Term Contracts

Where a father is employed under a fixed-term contract he may not be entitled to the full period of paternity leave if the contract ends while he is on paternity leave, therefore paternity leave will end on the same day as the fixed-term contract.² The expiry of the employee's contract during the period of paternity leave will not affect his entitlement to Paternity Benefit.

Example 1

John is employed on a fixed-term contract and is due to go on paternity leave 1 week before his fixed-term contract ends. When will his paternity leave end?

Solution 1

John's paternity leave will end after the expiry of 1 week when his fixed-term contract comes to an end.

4. Postponement of Paternity Leave

The Act provides for the postponement of paternity leave in the event of sickness of the father or hospitalisation of the child as follows:

4.1 Postponement of Paternity Leave in the event of Sickness of the Father

The Act provides for the postponement of paternity leave in the event of sickness of the father.³ Where a father becomes sick prior to the commencement of his paternity leave, he has the option of postponing his paternity leave. He should notify his employer in writing of his sickness accompanied by a medical certificate and his paternity leave can be postponed to a time when he is no longer sick. The father should notify his employer no later than the day he wishes to recommence his paternity leave subject to the paternity leave ending no later than 28 weeks after the date of birth or placement of the child.

This 28 week limit does not apply where the father is entitled to take the balance of maternity leave or adoptive leave due to the death of the mother/qualifying adopter. In this case, if the employee postponed his paternity leave due to sickness, he should recommence paternity leave within 7 days after he has recovered from his sickness, or on any other date as agreed with his employer.

Any absence due to sickness is treated in the same manner as any other sick leave absence i.e. the employee may claim Illness Benefit, or a payment from an employer's sick pay scheme, if applicable.

² Section 8(2)

³ Section 11

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4.2 Postponement of Paternity Leave in the event of hospitalisation of a child

A father may request, in writing, that his employer postpone all or part of his paternity leave in the event of the hospitalisation of the child. An employer may agree to this request, although he is not obliged to do so. Where the employer agrees to postpone all or part of the leave, he should notify the employee in writing. The father should continue to work or return to work on an agreed date which is no later than the return to work date specified in the employee's notification to take paternity leave.

The postponed leave should be taken in one continuous period and should commence within 7 days of the child being discharged from hospital or on an agreed date between the employee and employer.

Where employer agrees to the postponement and the father returns to work, he will be deemed to have recommenced his paternity leave if he is absent on sick leave during the period of postponement, unless he notifies his employer in writing that he does not wish for his paternity leave to recommence in which case the employee will not be entitled to avail of the outstanding balance of the leave. However, he may be entitled to sick pay under his employer's sick pay scheme, if applicable.

5. Surviving Parent's Entitlement

A **surviving parent** includes the mother of the child or a qualifying adopter; however, we will refer to the surviving parent as the mother in this chapter.

Where the father dies before the 28th week following the date of birth or placement of the child, the mother is entitled to take 2 weeks' paternity leave (or where the father was an employee, any outstanding balance not taken by him prior to his death), assuming she is an employee.⁴

In order to avail of paternity leave, the mother must notify her employer in writing of the death of the child's father, her intention to take paternity leave and the length of leave she believes she is entitled to. An employer may request the mother to submit a copy of the death certificate of the father.

The surviving parent's paternity leave will commence immediately after the 26 weeks maternity leave (or any extended maternity leave due to a premature birth) or 24 weeks adoptive leave, as appropriate; or in any other case, within 7 days of the father's death or the date of placement (if applicable), whichever is later.

In addition, the **Parent's Leave and Benefit Act 2019** provides that a surviving parent can avail of transferred parent's leave (i.e. the balance of parent's leave not taken by the other parent) where the other parent dies within 2 years following the birth of the child and the child was born on or after 1st November 2019. In this instance, transferred parent's leave can commence immediately after additional maternity leave, transferred paternity leave or maternity leave as applicable.

6. Paternity Benefit Entitlement

Paternity Benefit is paid by the DSP to an employee or a self-employed individual during paternity leave provided he satisfies certain PRSI contribution conditions. The PRSI Classes which qualify for Paternity Benefit are Classes A, E and H for employees and Class S for self-

⁴ Section 15

employed individuals. However, Paternity Benefit is not payable to serving members of the Defence Forces.

Paternity Benefit is payable to an **employee** who satisfies the following conditions:⁵

- Be in employment which is covered by the Act,
- Is certified by his employer as being entitled to paternity leave, **and**

Satisfy the following PRSI conditions (Classes A, E or H):

- Has at least 39 weeks paid PRSI contributions in the 12 months immediately before the first day of paternity leave, **or**
- Has at least 39 weeks paid PRSI contributions since first starting work and at least 39 weeks paid or credited PRSI contributions in the relevant tax year or in the year following the relevant tax year, **or**
- At least 26 weeks paid PRSI contributions in the relevant tax year and at least 26 weeks paid PRSI contributions in the tax year prior to the relevant tax year.

Paternity Benefit is payable to a **self-employed** father who is insurable under PRSI Class S, and who satisfies any one the following conditions:

- 52 weeks paid contributions in the relevant tax year, **or**
- 52 weeks paid contributions in the tax year immediately before the relevant tax year, **or**
- 52 weeks paid contributions in the tax year immediately following the relevant tax year.

If a person is self-employed but was in insurable employment before becoming self-employed, the PRSI contributions (Class A, E and H) in that employment may help him to qualify for Paternity Benefit if he does not satisfy the self-employment conditions as outlined above. The same applies for people who were previously self-employed and are now employees.

The *relevant tax year* is the second last income tax year (i.e. if paternity leave commences in 2023 the relevant tax year is 2021).

Example 2

Martin commenced employment for the first time in October 2021 and had a number of periods since then when he was unemployed. He commenced paternity leave on 1st November 2023. His Class A PRSI contribution history is as follows:

Year	No. of weeks	Period of Employment
2021	10 weeks	October to December
2022	27 weeks	January to August
2023	<u>43 weeks</u>	January to October
	80 weeks	

Does he qualify for Paternity Benefit?

Solution 2

Martin has met the condition of having 39 PRSI contribution weeks since he first started working. However, we need to see if he satisfies any one of the other conditions:

⁵ Social Welfare Consolidation Act 2005, Section 61B as inserted by the Paternity Leave and Benefit Act 2016

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- (a) 39 weeks paid or credited PRSI contributions in the relevant tax year or the subsequent tax year.

2021	10 weeks
2022	27 weeks

Martin does not meet this requirement.

- (b) 26 weeks paid PRSI contributions in the relevant tax year and the preceding tax year.

2020	0 weeks
2021	10 weeks

Martin does not meet this requirement.

- (c) 39 weeks paid PRSI contributions in the 12 month period before leave commences (i.e. 1st November 2022 to 31st October 2023).

2023	43 weeks
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Martin meets this requirement to qualify for Paternity Benefit.

6.1 Application for Paternity Benefit

An application for Paternity Benefit must be made online via MyWelfare www.mywelfare.ie giving details of their personal circumstances. MyWelfare is a secure online service which allows people to access certain services and payments provided by the DSP. If the applicant is an employee, his entitlement to paternity leave must be certified by his employer on a PB2 Form. Self-employed applicants must have the expected due date of their baby confirmed by a doctor on a PB3 Form. For postal applications, copies of these forms can be requested from the DSP <https://www.gov.ie/en/service/apply-for-paternity-benefit/#apply>

An individual can only access MyWelfare if he has created a MyGovID account which can be created at www.mygovid.ie/. An email address must be provided which will be the person's username. A second (recovery) email address and a mobile phone number are also required. Once registered for MyGovID, the individual will have access to MyWelfare. The individual will also need to have a Public Services Card in order to claim Paternity Benefit.

Employees should apply at least 4 weeks before the date that they intend to take paternity leave and self-employed applicants should apply at least 12 weeks before the date that they intend to take paternity leave.

Paternity Benefit is payable by electronic transfer into a current, deposit or savings account in a financial institution.

An individual who cannot meet the required number of PRSI contributions in order to qualify for Paternity Benefit may still take paternity leave and receive credited PRSI contributions. In order to do so, an employee must provide written confirmation from their employer confirming the dates that the leave was taken.

An individual will be disqualified from receiving Paternity Benefit if, during the period for which Paternity Benefit is payable, he engages in any form of insurable employment or self-employment, other than domestic activities in his own household. Failure to apply for Paternity Benefit within 6 months of the date of birth or date of placement may result in the loss of benefit.

Paternity Benefit can be postponed where the father notifies the DSP in writing of his intention to postpone his paternity leave due to the hospitalisation of the child. The payment will resume following written notification from the father that the child has been discharged from hospital.

Only one amount of Paternity Benefit is payable in the event of a multiple birth or a multiple adoption. A surviving parent is entitled to claim Paternity Benefit immediately after the last day for which Maternity Benefit or Adoptive Benefit was claimed. Where an employment ends during a period of paternity leave, Paternity Benefit will continue to be paid as if the employment had not ended.

Paternity Benefit will be paid based on the paternity leave dates specified in the application form submitted to the DSP. If the baby is prematurely born and the father wants to have his Paternity Benefit commence from an earlier date, he should send in a letter from the employer confirming the new leave dates and the date of birth to the Paternity Benefit section of the DSP. A self-employed father must send in a letter from his doctor or the hospital confirming the date of birth and the new leave dates.

Likewise, if the baby is overdue, Paternity Benefit will be payable from the dates specified in the application form. This may mean that Paternity Benefit is paid before the baby is born. There is no need to change the application unless the father wishes to have the Paternity Benefit postponed until the birth of the baby, in which case he should submit a letter from his employer as above. A self-employed father can also submit a letter but he does not need to seek confirmation from his doctor or the hospital.

6.2 Rate of Paternity Benefit

Paternity Benefit is calculated as being the higher of:⁶

- The weekly rate of Illness Benefit (including increases for qualified adults and qualifying children) which would be paid to the claimant if he was absent from work through illness or,
- €262 per week (€250 per week prior to 2nd January 2023).

Half the rate of Paternity Benefit is payable if an employee is in receipt of any of the following payments:

- One Parent Family Payment,
- Widow(er)'s or Surviving Civil Partner's (Contributory) Pension,
- Widow(er)'s or Surviving Civil Partner's (Non-Contributory) Pension,
- Death Benefit by way of Widow(er)'s, Surviving Civil Partner's or Dependent Parent's Pension (under the Occupational Injuries Scheme).

7. Employment Protection

An employee's employment rights (statutory, contractual or otherwise) are protected during a period of paternity leave (including transferred maternity, adoptive or parent's leave as applicable), except for the right to pay. Paternity leave is included as reckonable service for

⁶ Social Welfare Consolidation Act 2005, Section 61D as inserted by the Paternity Leave and Benefit Act 2016

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redundancy purposes. Any benefits an employee would be entitled to by virtue of being in work (e.g. annual leave, public holiday entitlements, pension entitlements, seniority, credit towards pay increments, etc.) are not affected by an absence on paternity leave and it is not considered as a break in an employee's continuous service.

Paternity leave shall not be treated as part of any other leave (e.g. sick leave, annual leave, parental leave, etc.) to which the employee may be entitled.

Where an employee, who is on probation or undergoing training in relation to his employment, takes paternity leave, the employer may suspend the time on probation or training until the employee returns to work.

Where an employee is dismissed for reasons relating to paternity leave, he is not required to have 1 year's service to bring a case against his employer for unfair dismissal under the **Unfair Dismissals Acts 1977 to 2015**.

There is nothing in the **Paternity Leave and Benefit Act 2016** which prevents an employee leaving his employment while on paternity leave.

7.1 Income Tax, PRSI and USC Implications

An employee is not entitled to be paid by his employer while absent on paternity leave unless such a term is included in the employee's terms and conditions of employment. Regardless of whether an employee is paid or not by his employer while on paternity leave, he is entitled to claim Paternity Benefit from the DSP assuming he meets the qualifying PRSI contribution requirements.

An employee will not be an employed contributor for any contribution week he is absent on paternity leave if he does not receive any payment from his employer. However, he will automatically receive credited PRSI contributions from the DSP while Paternity Benefit is paid (i.e. for the 2 weeks of statutory paternity leave).

Paternity Benefit is a taxable source of income but it is not liable to PRSI or USC. Revenue tax Paternity Benefit by reducing the employee's SRCOP and tax credits, on receipt of information from the DSP. The taxation of Paternity Benefit is covered in detail in the Chapter entitled "Taxation of Short-Term Social Insurance Benefits".

Where an employer pays full or partial salary or wages while an employee is on paternity leave and the employee retains the Paternity Benefit; Income Tax, PRSI and USC should only be applied to the amount of wages or salary actually paid by the employer, excluding the amount of Paternity Benefit. The employer should operate Income Tax and USC based on the latest Revenue Payroll Notification (RPN) received from Revenue, which may be issued on the Week 1 Basis.

7.2 Right to Return to Work

Paternity leave is not dependent on an employee returning to work. An employee must give his employer written notification of his intention to return to work at the same time as requesting paternity leave. An employee is entitled to return to the same job.⁷

⁷ Section 23

Where an employee informs his employer that he will not be returning to work after the expiry of paternity leave, it is best practice for the employer to request a written letter of resignation from the employee confirming the date he wishes to leave his employment.

Under no circumstances should an employer assume that the date of leaving occurs before the date the employee is due to return to work, unless otherwise stated in a resignation letter. The employee retains all his employment rights under the Act, except the right to pay, whether or not he intends to return to work.

7.3 Employee not permitted to return to work

An employee who is not permitted to return to work after an absence on paternity leave by his employer will be deemed to have been dismissed on the expected date of return and the dismissal shall be deemed to be an unfair dismissal under the **Unfair Dismissals Act 1977 to 2015**, unless there were substantial grounds justifying the dismissal, in which case the employee may be entitled to statutory redundancy under the **Redundancy Payments Acts 1976 to 2022**. Similarly, for the purpose of the **Minimum Notice and Terms of Employment Act 1973 to 2005**, the employment will be deemed to have been terminated on the expected return to work date.

8. Abuse of Paternity Leave

Paternity leave must be used to provide care to the child or support to the mother, or both. Where an employer feels that an employee is not entitled to paternity leave, he can refuse to grant paternity leave to the employee. Similarly, where an employee is absent on paternity leave and the employer has reasonable grounds for believing the leave is not being used for its intended purpose, the employer can terminate the employee's paternity leave.⁸

An employer must give the employee written notice outlining the reason for the refusal to grant paternity leave or for terminating paternity leave. The employer must notify the employee that he has 7 days in which to respond to the employer in writing. The employer must consider any response from the employee before deciding whether to grant, refuse or terminate the leave.

Where paternity leave is terminated, the employer must specify the date the father is due to return to work which must be no earlier than 7 days (to allow the employee the opportunity to respond) and no later than the original end date of the paternity leave, had it not been terminated.

Employers and employees should retain a copy of any notice issued, or received, relating to the refusal or termination of paternity leave.

9. Records

An employer is required to keep a record of paternity leave taken by his employees, specifying the period of employment of each employee and the dates and times of paternity leave taken. These records must be maintained for a period of 8 years after the paternity leave has been taken. Where an employer fails to keep such records, he may be liable to a Class B fine not exceeding €4,000.⁹

10. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled "Introduction to Employment Law". An employee may refer a dispute under the **Paternity Leave and Benefit**

⁸ Section 16

⁹ Section 17

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Act 2016 to the Workplace Relations Commission (WRC) for adjudication by an Adjudication Officer.

In the case of a complaint by an employee who is a father, the complaint must be made within 6 months from the date the expectant father informs his employer that the expectant mother is pregnant.

In the case of a complaint by an employee who is the spouse, civil partner or cohabitant of a qualifying adopter, the complaint must be made within 6 months from the day of placement, or where no placement takes place, the date the employee informs his employer of his intention to take paternity leave.¹⁰

In the case of a complaint by an employee who is surviving parent, the complaint must be made within 6 months from the date on which the surviving parent informed his employer that the relevant parent has died.

These time limits may be extended to 12 months if the WRC is satisfied that the reason for the delay was due to reasonable cause.

Where the complaint is upheld, a decision of an Adjudication Officer may include:¹¹

- The grant of paternity leave to the employee for a specific period, or
- Compensation that is just and equitable, but not exceeding 2 weeks' pay, or
- An award of paternity leave and compensation.

Pay includes allowances in the nature of pay and benefits in lieu of or in addition to pay.

If the complaint relates to dismissal, it must be presented under the **Unfair Dismissals Acts 1977 to 2015**, and not under this Act.

Where an employee has been directly or indirectly discriminated against in relation to any aspect of their entitlements under this Act, it will be presumed to be discrimination on the family status ground under the **Employment Equality Acts 1998 to 2021**, and the onus will be on the employer to prove otherwise.

An employer may also refer a dispute regarding an employee's entitlements under this Act to the WRC.

¹⁰ Workplace Relations Act 2015, Section 41(7)(f) as inserted by the Paternity Leave and Benefit Act 2016

¹¹ Section 28(1)

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Parent's Leave and Benefit Act 2019

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Parent's Leave**
 - 4. Postponement of Parent's Leave**
 - 5. Surviving Parent's Entitlement**
 - 6. Extension of Time-Limit to take Parent's Leave**
 - 7. Parent's Benefit Entitlement**
 - 8. Employment Protection**
 - 9. Records**
 - 10. Redress Provisions**
-

1. Main Provisions

The **Parent's Leave and Benefit Act 2019** came into effect on 1st November 2019 and currently provides for 7 weeks parent's leave with protection of employment for a relevant parent.¹ Parent's leave must be taken before the child's second birthday or within 2 years following the date of placement of an adopted child. The purpose of the Act is to enable the relevant parent to provide, or assist in the provision of, care to the child.

The Act also provides that parent's leave may be transferred to the surviving parent on the death of a relevant parent.

A **Relevant Parent** in relation to a child is defined as, a person, who is:

- A parent of the child, or a spouse, civil partner or cohabitant of the parent,
- The qualifying adopter of the child, or the spouse, civil partner or cohabitant of the qualifying adopter,
- Each member of a same sex marriage or each member of a civil partnership, and
- A cohabiting couple of the same sex.

A **Surviving Parent** in relation to a child, is the surviving spouse, partner or cohabitant of the relevant parent, where the relevant parent is deceased.

A Qualifying Adopter has the same meaning as it has in the **Adoptive Leave Acts 1995 and 2005**.

Parent's leave does not affect a parent's right to maternity leave, adoptive leave, paternity leave or parental leave.

¹ Section 5 as amended by the Parent's Leave and Benefit Act (Extension of Periods of Leave) Order 2022

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Note: Although a relevant parent in relation to a child can be either male or female, a spouse, civil partner or a cohabitant; for the remainder of this chapter a relevant parent will be referred to as the parent.

2. Covered Employees

The Act covers employees and self-employed individuals who are relevant parents, or a surviving parent from the first day of employment, including those who are working:

- Under a contract of service, whether full-time, part-time, permanent or fixed-term, including civil servants, Gardaí and members of the Defence Forces,
- As officers or servants of a local authority, Education and Training Boards, harbour authorities or the Health Service Executive (HSE),
- As apprentices, or
- As ‘agency temps’ - the person liable to pay the employee’s wages is deemed to be the employer.

3. Parent’s Leave

Parent’s leave consists of 7 weeks leave to enable a parent provide, or assist in the provision of, care to a child and must be taken within the first 2 years following the birth of the child, or date of placement of an adopted child. Parent’s leave can be taken in one continuous period, or periods each consisting of not less than 1 week in duration.²

To exercise his right to parent’s leave, an employee must give his employer at least 6 weeks’ written notice of his intention to take the leave.³ This notification must state the expected date the leave is due to commence **and** the duration of the parent’s leave.

Where the employer is not the same employer from whom the parent took maternity leave, adoptive leave or paternity leave, the employer may request documentary evidence such as a medical certificate confirming the expected date of birth, birth certificate, certificate of placement or declaration of eligibility and suitability.

Parent’s leave cannot be transferred between parents. However, where a parent dies before they avail of all or part of their parent’s leave, the balance of the untaken parent’s leave can be transferred to the surviving parent.⁴

An employee can give one notice to his employer of his intention to take parent’s leave outlining all periods of parent’s leave he proposes to take, or the employee can give a separate notice in respect of each period (where the leave is taken in periods each consisting of not less than 1 week in duration).

In the event of a multiple birth or a multiple adoption, a parent is still only entitled to 7 week’s parent’s leave.⁵

² Section 5(2)

³ Section 6

⁴ Section 16

⁵ Section 5(5)

3.1 Commencement of Parent's Leave

Parent's leave can commence on any date as the parent selects in his notification to his employer which must be before the child's second birthday or within 2 years following the date of placement of an adopted child. However, the **earliest commencement date** for the commencement of parent's leave is dependent on the circumstances of the parent as follows:

Where parent is entitled to maternity leave:⁶

- Where the parent is taking maternity leave or additional maternity leave, the day immediately following the end of the maternity or additional maternity leave as applicable,
- Where the parent is taking transferred paternity leave (i.e. where the death of the child's father occurs within 28 weeks following the birth of the child), the day immediately following the end of the transferred paternity leave,
- Where the parent is taking transferred paternity leave and additional maternity leave, the day immediately following the end of the additional maternity leave, or
- Where maternity leave, additional maternity leave or transferred paternity leave is postponed, parent's leave can be taken after such postponement.

Any reference to maternity leave above includes extended maternity leave in the event of a premature birth.

Where parent is entitled to adoptive leave:⁷

- Where the parent is taking adoptive leave or additional adoptive leave, the day immediately following the end of the adoptive leave or additional adoptive leave as applicable,
- Where the parent is taking transferred paternity leave (i.e. where the death of the relevant parent occurs within 28 weeks following the date of placement of the child), the day immediately following the end of the transferred paternity leave,
- Where the parent is taking transferred paternity leave and additional adoptive leave, the day immediately following the end of the additional adoptive leave, or
- Where adoptive leave, additional adoptive leave or transferred paternity leave is postponed, parent's leave can be taken after such postponement.

If a parent availed of parent's leave and a child is subsequently placed for adoption, the adopting parents are also entitled to parent's leave for that child.

Where parent is entitled to paternity leave:⁸

- On the date of birth of the child or date of placement of an adopted child, or the day immediately following the end of paternity leave,
- Where the parent becomes entitled to transferred maternity or additional maternity leave on the death of the child's mother or transferred adoptive or additional adoptive leave on the death of the adopting mother, parents leave may be taken after such periods, or
- Where maternity or additional maternity leave, adoptive or additional adoptive leave is postponed, parent's leave may be taken after such postponement.

3.2 Early Births

Where the birth occurs 4 weeks or more before the expected date of birth and the parent wishes to take his parent's leave to coincide with the birth and he has not yet notified his employer of his

⁶ Section 8

⁷ Section 9

⁸ Section 10

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intention to take parent's leave, he must give his employer written notice of his intention to take parent's leave within 7 days of the date of birth, to comply with this Act.⁹

3.3 Late Births

Where the date of birth occurs later than expected or the date of placement is postponed, and the parent had previously notified their employer of their intention to take parent's leave, the parent can select another date for their parent's leave to commence, as parent's leave cannot commence before the date of birth or placement.¹⁰

3.4 Entitlement to Parent's Leave on Death of Child

Where a child in relation to whom a parent is on, or entitled to, parent's leave, dies on or before the expiration of the parent's leave, the parent is entitled to take the outstanding balance of parent's leave. This includes a parent who has not yet notified his employer of his intention to avail of the parent's leave at the time of the death of the child.¹¹

3.5 Parent's Leave and Fixed Term Contracts

Where a parent is employed under a fixed-term contract he may not be entitled to the full period of parent's leave if the contract ends while he is on parent's leave as parent's leave will end on the same day as the expiry of the fixed-term contract. The expiry of the employee's contract during the period of parent's leave will not affect his entitlement to Parent's Benefit.

Example 1

Mark is employed on a fixed-term contract and is due to go on parent's leave 1 week before his fixed-term contract ends. When will his parent's leave end?

Solution 1

Mark's parent's leave will end after the expiry of 1 week when his fixed-term contract comes to an end.

4. Postponement of Parent's Leave

The Act provides for the postponement of parent's leave by either the employer or the parent as follows:

4.1 Postponement of Parent's Leave by Employer

Where the employer is satisfied that the timing of the parent's leave requested by the employee would have a substantial adverse effect on the operation of his business, the employer is permitted to postpone the commencement of parent's leave.¹² In determining whether the leave would have an adverse effect on the business, the employer can take into consideration such factors as:

- a) Any seasonal variations in the volume of work concerned,
- b) The unavailability of a person to carry out the duties of the employee in the employment during the period of parent's leave,
- c) The nature of the employee's duties,

⁹ Section 11

¹⁰ Section 12

¹¹ Section 15

¹² Section 13

- d) The number of other employees who are absent on parent's leave for all or part of the period requested by the employee, or
- e) Any other relevant matters.

Where the employer wishes to postpone the employee's parent's leave, the employer must:

- Consult with the employee in relation to the proposed postponement,
- Notify the employee of his intention to postpone the leave in writing no later than 4 weeks before the parent's leave is due to commence, and agree an alternative commencement date which must be within 12 weeks of the commencement date requested by the employee,
- Include a summary of the grounds for the postponement of the parent's leave, and
- Retain a copy of the notification issued to the employee.

An employer cannot postpone the commencement of an employee's parent's leave more than once.

4.2 Postponement of Parent's Leave in the event of hospitalisation of a child

A parent may request, in writing, that his employer postpone all or part of his parent's leave in the event of the hospitalisation of the child. An employer may agree to this request, although he is not obliged to do so. The employer is required to notify the employee in writing of the employer's decision in relation to the request as soon as practicable.

Where the employer agrees to postpone all or part of the leave:

- The parent should continue to work, or return to work on an agreed date which is no later than the date the parent's leave was due to end, and
- The postponed leave should recommence within 7 days of the child being discharged from hospital or on such date as agreed between the parent and employer.

Where the parent returns to work during a period of postponed leave and is subsequently absent from work due to illness during the period of the postponement, the employee's parent's leave will be deemed to have recommenced from the first day of sick leave, unless he notifies his employer in writing that he does not wish for his parent's leave to recommence in which case the employee will not be entitled to avail of the outstanding balance of the postponed leave. However, he may be entitled to sick pay under his employer's sick pay scheme, if applicable.

A parent who wishes to resume his postponed leave should notify his employer in writing no later than the day the leave resumes of his intention to recommence his parent's leave and the duration of the leave. An employer can waive his right to receive this notification. The employee can change his request to resume postponed leave once the change is notified to the employer in writing no later than the day the postponed leave was due to commence.

5. Surviving Parent's Entitlement

Where a parent, who was an employee with an entitlement to parent's leave, dies within 2 years following the date of birth or placement of the child, the surviving parent is entitled to take the outstanding balance of the deceased's parent's leave, known as transferred parent's leave.

Transferred parent's leave may be taken in one continuous period or in separate periods, each consisting of not less than 1 week. A surviving parent is permitted to take transferred parent's leave immediately after their parent's leave.

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To avail of transferred parent's leave, the surviving parent must notify his employer in writing not later than 6 weeks before the commencement of the transferred parent's leave, of

- The death of the parent,
- His intention to take transferred parent's leave,
- The length of leave she believes she is entitled to, and
- If requested by his employer, submit a copy of the death certificate of the parent.

Prior to the commencement of transferred parent's leave, an employee can change the dates of his transferred parent's leave by submitting a new notification to his employer, which will revoke any previous notification submitted.

The same rules relating to when parent's leave can be taken and postponed apply in a similar manner to transferred parent's leave.

6. Extension of Time-Limit to take Parent's Leave

As outlined previously, the entitlement to take parent's leave ends on the child's 2nd birthday or on the 2nd anniversary of the date of placement of an adopted child. However, where the commencement of parent's leave has been postponed by the employer, or the employer agrees to postpone the leave due to the hospitalisation of the child, this 2 year period can be extended by the duration of the postponement.

Similarly, where the parent is prevented from taking all or part of his parent's leave within the required timeframe due to the requirement of the employee to give his employer 6 weeks' notice of his intention to take parent's leave, this 2 year period may be extended by 6 weeks.

7. Parent's Benefit Entitlement

Parent's Benefit is paid by the DSP to an employee or a self-employed individual during parent's leave provided he satisfies certain PRSI contribution conditions. The PRSI Classes which qualify for Parent's Benefit are Classes A, B, C, D, E and H for employees and Class S for self-employed individuals. However, Parent's Benefit is not payable to serving members of the Defence Forces.

Parent's Benefit is payable to an **employee** who satisfies the following conditions:

- Is certified by his employer as being entitled to parent's leave, **and**
- Has at least 39 weeks paid PRSI contributions in the 12 months immediately before the first day of parent's leave, **or**
- Has at least 39 weeks paid PRSI contributions since first starting work and at least 39 weeks paid or credited PRSI contributions in the relevant tax year or in the year following the relevant tax year, **or**
- At least 26 weeks paid PRSI contributions in the relevant tax year and at least 26 weeks paid PRSI contributions in the tax year prior to the relevant tax year.

Parent's Benefit is payable to a **self-employed** individual who is insurable under PRSI Class S and satisfies any one the following conditions:

- 52 weeks paid contributions in the relevant tax year, **or**
- 52 weeks paid contributions in the tax year immediately before the relevant tax year, **or**
- 52 weeks paid contributions in the tax year immediately following the relevant tax year.

Note: A parent who qualifies for Maternity Benefit, Paternity Benefit or Adoptive Benefit in respect of that child will be deemed to have satisfied the requirements to be entitled to Parent's Benefit.

If a person is self-employed but was in insurable employment before becoming self-employed, the PRSI contributions (Class A, B, C, D, E and H) in that employment may help him to qualify for Parent's Benefit if he does not satisfy the self-employment conditions as outlined above. The same applies for people who were previously self-employed and are now employees.

The *relevant tax year* is the second last income tax year (i.e. if parent's leave commences in 2023 the relevant tax year is 2021).

Example 2

Martin commenced employment for the first time in October 2021 and had a number of periods since then when he was unemployed. He commenced parent's leave on 1st November 2023. His Class A PRSI contribution history is as follows:

Year	No. of weeks	Period of Employment
2021	10 weeks	October to December
2022	27 weeks	January to August
2023	43 weeks	January to October
	80 weeks	

Does he qualify for Paternity Benefit?

Solution 2

Martin has met the condition of having 39 PRSI contribution weeks since he first started working. However, we need to see if he satisfies any one of the other conditions:

- a) *39 weeks paid or credited PRSI contributions in the relevant tax year or the subsequent tax year.*

2021	10 weeks
2022	27 weeks

Martin does not meet this requirement.

- b) *26 weeks paid PRSI contributions in the relevant tax year and the preceding tax year.*

2020	0 weeks
2021	10 weeks

Martin does not meet this requirement.

- c) *39 weeks paid PRSI contributions in the 12 month period before leave commences (i.e. 1st November 2022 to 31st October 2023).*

2023	43 weeks
------	----------

Martin meets this requirement to qualify for Paternity Benefit.

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7.1 Application for Parent's Benefit

An application for Parent's Benefit can be made online via MyWelfare www.mywelfare.ie. MyWelfare is a secure online service which allows people to access certain services and payments provided by the DSP. If the applicant is an employee, they will be required to provide their employment details and the child's PPSN. By completing the employment details the applicant declares that the employer has approved their entitlement to parent's leave. A random selection of employers will receive a letter to verify the details on the parent's benefit application form. Where an individual is unable to apply online, the Parent's Benefit application form can be requested from the Parent's Benefit section of the DSP or by email at parentsben@welfare.ie.

An individual can only access MyWelfare if he has created a MyGovID account which can be created at www.mygovid.ie/. An email address must be provided which will be the person's username. A second (recovery) email address and a mobile phone number are also required. Once registered for MyGovID, the individual will have access to MyWelfare. The individual will need to have a Public Services Card in order to make an online application for Parent's Benefit.

Employees should apply at least 4 weeks before the date that they intend to take parent's leave and self-employed applicants should apply at least 6 weeks before the date that they intend to take parent's leave.

Parent's Benefit is payable by electronic transfer into a current, deposit or savings account in a financial institution.

An individual who cannot meet the required number of PRSI contributions in order to qualify for Parent's Benefit may still take parent's leave and receive credited PRSI contributions. In order to do so, an employee must provide written confirmation from their employer confirming the dates that the leave was taken.

An individual will be disqualified from receiving Parent's Benefit if, during the period for which Parent's Benefit is payable, he engages in any form of insurable employment or self-employment, other than domestic activities in his own household.

Parent's Benefit can be postponed where the claimant notifies the DSP in writing of his intention to postpone his parent's leave due to the hospitalisation of the child. The payment will resume following written notification from the claimant that the child has been discharged from hospital.

Only one amount of Parent's Benefit is payable in the event of a multiple birth or adoption. Where an employment ends (e.g. a fixed term contract) during a period of parent's leave, Parent's Benefit will continue to be paid as if the employment had not ended.

Parent's Benefit will be paid based on the parent's leave dates specified in the application form submitted to the DSP. If the baby is prematurely born and the parent wants to have his Parent's Benefit commence from an earlier date, he should send in a letter from the employer confirming the new leave dates and the date of birth to the Parent's Benefit section of the DSP. A self-employed claimant must send in a letter from his doctor or the hospital confirming the date of birth and the new leave dates.

7.2 Rate of Parent's Benefit

Parent's Benefit is calculated as being the higher of:¹³

- The weekly rate of Illness Benefit (including increases for qualified adults and qualifying children) which would be paid to the claimant if he was absent from work through illness, or
- €262 per week (€250 per week prior to 2nd January 2023).

Half the rate of Parent's Benefit is payable if an employee is in receipt of any of the following payments:

- One Parent Family Payment,
- Widow(er)'s or Surviving Civil Partner's (Contributory) Pension,
- Widow(er)'s or Surviving Civil Partner's (Non-Contributory) Pension,
- Death Benefit by way of Widow(er)'s, Surviving Civil Partner's or Dependent Parent's Pension (under the Occupational Injuries Scheme)

An individual may qualify for a half-rate Carer's Allowance in addition to a standard rate of Parent's Benefit if they provide full-time care to another person. Parent's Benefit continues to be payable where the relevant child dies while the parent is absent on parent's leave.

8. Employment Protection

An employee's employment rights (statutory, contractual or otherwise) are protected during a period of parent's leave and transferred parent's leave, **except** for the right to pay.¹⁴ Parent's leave is included as reckonable service for redundancy purposes. Any benefits an employee would be entitled to by virtue of being in work (e.g. annual leave, public holiday entitlements, pension entitlements, seniority, credit towards pay increments, etc.) are not affected by an absence on parent's leave and it is not considered as a break in an employee's continuous service.

Parent's leave shall not be treated as part of any other leave (e.g. sick leave, annual leave, maternity leave, adoptive leave, paternity leave, parental leave, etc.) to which the employee may be entitled.

Where an employee, who is on probation, undergoing training in relation to his employment or is employed under a contract of apprenticeship, takes parent's leave, the employer may suspend the time on probation, training or apprenticeship until the employee returns to work.

Where an employee is dismissed for reasons relating to parent's leave, he is not required to have 1 year's service to bring a case against his employer for unfair dismissal under the **Unfair Dismissals Acts 1977 to 2015**.

There is nothing in the **Parent's Leave and Benefit Act 2019** which prevents an employee leaving his employment while on parent's leave.

8.1 Income Tax, PRSI and USC Implications

An employee is not entitled to be paid by his employer while absent on parent's leave unless such a term is included in the employee's terms and conditions of employment. Regardless of whether an employee is paid by his employer while on parent's leave, he is entitled to claim Parent's Benefit from the DSP assuming he meets the qualifying PRSI conditions.

¹³ Section 29 (61i)

¹⁴ Section 18

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An employee will not be considered to be an employed contributor for any contribution week he is absent on parent's leave if he does not receive any payment from his employer. However, he will automatically receive credited PRSI contributions from the DSP while Parent's Benefit is paid (i.e. 7 weeks' credited contributions).

Parent's Benefit is a taxable source of income, but it is not liable to PRSI or USC. Revenue tax Parent's Benefit by reducing the employee's SRCOP and tax credits, on receipt of information from the DSP. The taxation of Parent's Benefit is covered in detail in the Chapter entitled "Taxation of Short-Term Social Insurance Benefits".

Where an employer pays full or partial salary or wages while an employee is on parent's leave and the employee retains the Parent's Benefit; Income Tax, PRSI and USC should only be applied to the amount of wages or salary actually paid by the employer, excluding the amount of Parent's Benefit. The employer should operate Income Tax and USC based on the latest Revenue Payroll Notification (RPN) received from Revenue, which may be issued on the Week 1 Basis.

8.2 Right to Return to Work

Parent's leave is not dependent on an employee returning to work. An employee must give his employer written notification of his intention to return to work at the same time as requesting parent's leave. An employee is entitled to return to the same job and terms and conditions which are no less favourable than those which applied immediately before the commencement of parent's leave.¹⁵

Where an employee informs his employer that he will not be returning to work after the expiry of parent's leave, it is best practice for the employer to request a written letter of resignation from the employee confirming the date he wishes to leave his employment.

Under no circumstances should an employer assume that the date of leaving occurs before the date the employee is due to return to work, unless otherwise stated in a resignation letter. The employee retains all his employment rights under the Act, except the right to pay, whether or not he intends to return to work.

Where an interruption or cessation of work at the employee's place of employment exists at the date the employee is due to return to work, the employee's return to work may be postponed until the interruption or cessation is rectified.

8.3 Employee not permitted to return to work

An employee, who is not permitted to return to work after an absence on parent's leave by his employer, will be deemed to have been dismissed on the expected date of return and the dismissal shall be deemed to be an unfair dismissal under the **Unfair Dismissals Act 1977 to 2015**, unless there were substantial grounds justifying the dismissal, in which case the employee may be entitled to statutory redundancy under the **Redundancy Payments Acts 1976 to 2022**.¹⁶ Similarly, for the purpose of the **Minimum Notice and Terms of Employment Act 1973 to 2005**, the employment will be deemed to have been terminated on the expected return to work date.

¹⁵ Section 20

¹⁶ Section 22

9. Records

The Act makes no reference to the retention of records by an employer, other than to state that an employer is required to retain a copy of any decision issued to an employee in response to a request from the employee to postpone parent's leave. The Act does not state how long this decision should be retained. However, as an employee has up to 6 months from the date of the alleged contravention to make a complaint to the Workplace Relations Commission (WRC) (which may be extended to 12 months), it is advisable that employers retain records of parent's leave for at least 12 months.

10. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled "Introduction to Employment Law". An employee may refer a dispute under the **Parent's Leave and Benefit Act 2019** to the WRC for adjudication by an Adjudication Officer.

Complaints must be made within 6 months beginning on the day immediately following the date the dispute occurred. This time limit may be extended to 12 months if the WRC is satisfied that the reason for the delay was due to reasonable cause.

A decision of an Adjudication Officer may include such directions and/or redress as the Adjudication Officer considers necessary to resolve the dispute, which may include:¹⁷

- The grant of parent's leave to the employee for a specific time for a specific period, or
- Compensation that is just and equitable, but not exceeding 7 weeks' pay,
- An award of parent's leave and compensation, or
- Postponement of parent's leave for a specified period where he is satisfied that the taking of parent's leave would have a substantial adverse effect on the employer's business.

Pay includes allowances in the nature of pay and benefits in lieu of or in addition to pay.

If the complaint relates to dismissal, it must be presented under the **Unfair Dismissals Acts 1977 to 2015**, and not under this Act.

Where an employee has been directly or indirectly discriminated against in relation to any aspect of their entitlements under this Act, it will be presumed to be discrimination on the family status ground under the **Employment Equality Acts 1998 to 2021**, and the onus will be on the employer to prove otherwise.

An employer may also refer a dispute regarding an employee's entitlements under this Act to the WRC.

¹⁷ Section 24

CHAPTER 46

Parental Leave Acts 1998 to 2019

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Duration of Parental Leave**
 - 4 Employment Protection**
 - 5. Non-Entitlement or Abuse of Parental Leave**
 - 6. Force Majeure Leave**
 - 7. Penalisation**
 - 8. Records**
 - 9. Redress Provisions**
 - 10. Work Life Balance and Miscellaneous Provisions Act 2023**
-

1. Main Provisions

The Acts introduced unpaid leave from employment for both parents to take care of a child. Each parent with one year's continuous service with the employer from whose employment the leave is to be taken, is entitled to take 26 working weeks unpaid leave for each eligible child. Parental leave must be taken before the child is 12 years of age with modifications for an adopted or disabled child. The Acts also introduced Force Majeure leave, which is paid leave, owing to illness or injury to an employee's relative.

The purpose of the Acts is to reconcile work and family life and to encourage the introduction of new flexible ways of organising work and time that are better suited to the changing needs of society.

2. Covered Employees

An employee, who is a natural or adopting parent or acting in "loco parentis" (in the place of a parent) in respect of an eligible child is entitled to take 26 working weeks unpaid leave from his employment, in order to take care of his child. To qualify, an employee must have one year's continuous service.

Where an employee has more than 3 months service, but less than 12 months service and the child is approaching the age threshold, the employee is entitled to take pro rata parental leave of 1 week for each month of continuous service, which he has completed with the employer at the time of commencement of the parental leave.

The entitlement to parental leave ends on the child's 12th birthday, or 16th birthday in respect of a child with a disability, or until the child ceases to have the disability, if earlier.

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The **Parental Leave Acts 1998 to 2019** defines the meaning of disability as follows:¹

Disability in relation to a child means an enduring physical, sensory, mental health or intellectual impairment of the child such that the level of care required for the child is substantially more than the level of care that is generally required for children of the same age who do not have any such impairment.

In the case of an adopted child who is between 10 and 12 years of age at the time of the adoption order, parental leave ends 2 years from the date of the adoption order.

Each parent has a separate right to take parental leave from his employer. The leave is not transferable where parents are employed by different employers. However, where both parents are employed by the same employer, a maximum of 14 weeks parental leave may be transferred from one parent to the other, subject to the employer's agreement.²

Parental leave does not affect an employee's right to maternity leave, adoptive leave, paternity leave or parent's leave.

3. Duration of Parental Leave

Parental leave may consist of:³

- a) 1 continuous period, or
- b) 2 separate periods of a minimum of 6 continuous weeks with a minimum 10 week interval between each period,
- c) Where the employer agrees, a number of periods of leave comprising of days and/or hours off.
- d) Where an employee previously availed of parental leave using one of the methods outlined above in (a) to (c), in blocks of 1 or more weeks at a time.

Note: An employee has a statutory entitlement to options (a), (b) and (d). Option (c) is subject to agreement between the employer and employee. An employer can agree to a shorter interval in option (b).

Method (d) was introduced on 1st September 2019 to provide a legal method for an employee to avail of the additional 4 weeks' parental leave where the employee previously availed of some or all of his parental leave.

Where an employee qualifies for parental leave in respect of more than one child, the employee may not take more than 26 working weeks parental leave in any 12 month period, unless the employer agrees. This restriction does *not* apply for multiple births.

Example 1

Anne has applied for parental leave in respect of her 3 year old son. This is her first request for parental leave in respect of her son. Anne normally works a 5 day week. The following are some of the various options available to Anne:

Option 1 26 continuous weeks.

¹ Section 6 (9) as amended by the Parental Leave (Amendment) Act 2006

² Section 6 (6A) inserted by the Civil Law (Miscellaneous Provisions) Act 2008 as amended by the European Union (Parental Leave) Regulations 2013

A)³ Section 7 as amended by the Parental Leave (Amendment) Act 2006

Option 2 2 separate periods, with each period being at least 6 continuous weeks, with a 10 week interval between each period (e.g. 13 weeks during this Summer and 13 weeks next Summer).

Option 3 Subject to her employer's agreement: 1 day per week for 130 weeks; work mornings only (or afternoons only) for 52 weeks; 1 week on – 1 week off for 52 weeks, etc.

Example 2

Anita previously availed of 22 weeks parental leave in respect of her daughter. Anita has now requested to take the remaining 4 weeks for her daughter who is aged 10. Anita normally works a 5 day week. The following are some of the various options available to Anita:

Option 1 26 continuous weeks – Anita cannot avail of this option as she has already taken 22 weeks.

Option 2 2 separate periods, with each period being at least 6 continuous weeks, with a 10 week interval between each period – Anita cannot avail of this option as she has only 4 weeks remaining.

Option 3 Subject to her employer's agreement: 1 day per week for 20 weeks; work mornings only (or afternoons only) for 8 weeks, etc.

Option 4 Anita is entitled to avail of the remaining 4 weeks in blocks of 1 or more weeks at a time. Anita has a statutory entitlement to this option.

Where an employee falls ill prior to the commencement of parental leave and is unable to care for the child, the leave may be postponed until the employee has recovered. Where an employee becomes ill while on parental leave and is unable to care for the child, parental leave may be suspended for the duration of the illness following which parental leave recommences. An employee is required to produce a medical certificate to the employer, confirming the illness and the inability of the employee to care for the child. During a period of illness while on parental leave the employee will be regarded as being on sick leave for that period, as opposed to parental leave, and will be entitled to benefit from the payment of sick pay or Illness Benefit (if applicable). The period of parental leave can then be extended as agreed by the employer.

3.1 Notification to Employer

An employee must give his employer at least 6 weeks' notice, in writing, of his intention to take parental leave. The notice must include:⁴

- The date of commencement of the leave,
- The duration of the leave,
- The manner in which the leave will be taken, and
- The employee's signature.

An employee can give one notice to his employer of his intention to take parental leave outlining all periods of parental leave he proposes to take, or the employee can give a separate notice in respect of each period (e.g. where the leave is taken in separate periods). Where the employee gives a separate notice of his intention to take parental leave in respect of each period of parental leave, the employee must give his employer at least 6 weeks' notice in respect of each period.

⁴ Section 8 as amended by the Parental Leave (Amendment) Act 2006

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Once notice has been received by the employer, both the employee and the employer must prepare a “**confirmation document**”, no less than 4 weeks before the leave is due to begin.⁵ The confirmation document, once signed by both employee and employer, cannot be altered unless both parties agree, or the employee becomes ill and is unable to care for the child. An employer is entitled to request evidence of the child’s date of birth (e.g. a birth certificate) in respect of whom the parental leave is being taken. The following is a sample of a parental leave request form and a confirmation document:

Sample Parental Leave Request Form

Parental Leave is granted solely for the purpose of taking care of the child named below. Application for parental leave should be made not later than 6 weeks before the proposed commencement date.

Employee Name: _____

Name of Child: _____

Child’s Date of Birth: _____

Commencement Date of Employment: _____

Periods of Parental Leave already taken in respect of this child/another child:

(in this employment): _____

(with another employer): _____

Proposed Date of Commencement of Parental Leave: _____

Proposed Duration of Parental Leave: _____

Proposed Manner in which to be taken: _____

I declare that the information given above is accurate and complete.

Employee Signature: _____ Date: _____

⁵ Section 9

Sample Confirmation Document

As required under the Parental Leave Acts 1998 to 2019

Name of Employee: _____

Name of Employer: _____

Commencement Date of Period(s) of Parental Leave: _____

Nature and Duration of Period(s) of Parental Leave: _____

Signatures:

Employee: _____

Date: _____

Employer: _____

Date: _____

A copy of this document should be retained by the applicant. Once signed, no amendment can be made to this document without the agreement of both parties.

Prior to signing the confirmation document, an employer may postpone parental leave if it would have a substantial adverse effect on the business, but must agree to another date within 6 months.⁶ An employer can take into consideration such factors as seasonal variations in the volume of the work concerned, the unavailability of a person to carry out the duties of the employee, the nature of those duties, the number of employees in the employment or the number employees who have previously been granted parental leave during the same period requested by the employee.

The employer is required to consult with the employee before postponing the parental leave. The employer must notify the employee in writing of the postponement, at least 4 weeks before the proposed date of commencement of the leave, outlining the reason for the postponement. An employer is not permitted to postpone the commencement of parental leave more than once, unless the reason for the postponement is due to a seasonal variation in the volume of the work, in which case the commencement cannot be postponed more than twice.

Furthermore, if as a result of a postponement, the child will reach the age limit before the end of the requested period of parental leave, the employee retains the right to take the full period of parental leave requested.

As previously stated, once a confirmation document is signed by both parties, the parental leave cannot be postponed unless the employee agrees.

4. Employment Protection

During an absence on parental leave, an employee is regarded as being in the employment of the employer and retains all employment rights, except the right to remuneration and superannuation

⁶ Section 11 as amended by the Parental Leave (Amendment) Act 2006

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benefits.⁷ Parental leave is reckonable service for the purposes of annual leave, public holiday entitlements, increments, seniority etc. An absence on parental leave does not break continuity of service and is reckonable service for redundancy purposes.

Employees retain an entitlement to any public holidays falling during a period of parental leave and therefore, either a corresponding number of paid days in lieu of public holidays should be added to the end of the period of leave or an additional day's pay granted in respect of each public holiday.

Example 3

Mary has been granted parental leave by her employer for 26 continuous weeks from 30th March. Mary will return to work on 28th September. She will not be paid while on parental leave. Advise Mary of her statutory annual leave and public holiday entitlements accruing until the end of her parental leave.

Solution 3

Annual Leave:

Mary retains all employment rights during parental leave including annual leave. Therefore, she has accrued approximately 15.03 days (1.67 days x 9 months) from January to the end of September.

Public Holidays:

Mary is also entitled to be credited with the following public holidays, which arose during her 26 weeks of parental leave:

Easter Monday

First Monday in May

First Monday in June

First Monday in August

Mary could be granted an additional day's pay or an additional day of annual leave in respect of the above public holidays.

4.1 Income Tax, PRSI and USC Implications

While an employee is on parental leave, Income tax and USC will continue to operate on the Cumulative Basis or whatever basis is appropriate, depending on the latest Revenue Payroll Notification (RPN) issued to the employer. There is no obligation on an employer to pay an employee while on parental leave, unless such a payment is provided for in the employee's contract of employment.

When an employee is absent on block periods of parental leave (i.e. the employee receives no payment from the employer for certain weeks), the employee will not have a paid PRSI contribution for that week. However, he is entitled to receive a credited PRSI contribution for the weeks in which he is absent. In order to receive a credited PRSI contribution for the relevant weeks, the employer must forward a letter to the Records Section of the Department of Social Protection (DSP) advising them that the employee was on parental leave and specifying the periods for which he was on parental leave. This is extremely important as his PRSI record may affect his future entitlement to benefits from the DSP.

⁷ Section 14

However, if an employee takes parental leave at the rate of a day, or a number of days per week, the level of his earnings in each week determines the employee's PRSI subclass. Where an employee holds an employment which is insurable under PRSI Class A, earns €38 or more in a week the employee will have a paid PRSI Class A contribution for each week and there is no requirement to apply for credited contributions as outlined above.

4.2 Right to Return to Work

After parental leave has expired, an employee should return to his old job, or one equivalent in grade and location.⁸ If it is not reasonably practicable for an employer to allow an employee to return to the job held immediately prior to parental leave being taken, the employer must offer the employee suitable alternative employment. However, the terms of the alternative employment must not be less favourable to the employee than the terms of his original job.

Where an employee returns to work after taking parental leave, he has the right to request a change to his working hours or pattern, or both, for a set period of time as agreed between the employee and employer.⁹ A written request must be given by the employee to the employer at least 6 weeks in advance of the commencement of the set period. The employer must consider the request, having regard to the needs of the employer and employee, but does not have to agree to it. The employer must notify the employee of the outcome of the request no later than 4 weeks after the request is made. Where the employer agrees to the request, an agreement outlining the changes must be prepared, signed by both parties, and retained by the employer, with a copy given to the employee.

5. Non-Entitlement or Abuse of Parental Leave

If an employee applies for parental leave and the employer has reasonable grounds for believing that an employee is not entitled to the leave, the employer must notify the employee in writing of the refusal to grant parental leave.

Parental leave should be used for the purpose of looking after an employee's child and cannot be treated as part of any other leave to which the employee is entitled (i.e. sick leave, adoptive leave, maternity leave, paternity leave, annual leave or force majeure leave).

An employer, who has reasonable grounds to believe that parental leave is not being used for the care of a child should first write to the employee and notify him of the employer's intention to terminate the parental leave.

Where an employer issues a letter to an employee in which he refuses to grant parental leave or intends to terminate the employee's parental leave, the letter should contain a summary of the reasons why the employer intends to refuse or terminate the leave and the employer should invite the employee to make representations to him on the matter, within 7 days of receipt of the letter. The employer is then obliged to consider any submission made by the employee, before making a final decision. Once a final decision has been taken to refuse or terminate the leave, the employer must issue a written notification to the employee in which the grounds of the refusal or termination are specified.

Where the leave is being terminated, the date of termination must also be specified in the letter. The date of the termination must be at least 7 days after the date of receipt of the notification by

⁸ Section 15

⁹ Section 15A as inserted by the European Union (Parental Leave) Regulations 2013

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the employee. In the case of a termination, the employer may permit the employee to complete the period of parental leave before returning to work, or to return to work immediately. This means that in the period from the date the leave is terminated by the employer, to the date the employee returns to work, the employee will be regarded as having been absent on unpaid leave and will not be entitled to any PRSI credits from the DSP.

Both the employer and the employee are obliged to keep a copy of any correspondence issued in relation to the termination of parental leave by the employer.

6. Force Majeure Leave

The Parental Leave Acts 1998 to 2019 also introduced Force Majeure leave,¹⁰ which gives all employees a right to limited paid time off, where “*for urgent family reasons, owing to an injury to or the illness of a person specified in subsection (2), the immediate presence of the employee at the place where the person is, whether at his or her home or elsewhere, is indispensable*”

Note that all of the following important terms must be met to qualify for Force Majeure leave:

- “For urgent family reasons”
- “Owing to an injury to or the illness of”
- “A person specified in the subsection (2)”
- “The immediate presence of the employee”
- “At the place where the person is”
- “Is indispensable”

The persons specified in subsection (2) above are defined as:

- A child or adoptive child of the employee
- A child to whom the employee is “*in loco parentis*” i.e. has taken the place of the parent
- A spouse or person with whom an employee is living with as husband and wife
- Brother or sister of the employee
- Parent or grandparent of the employee
- Persons in a relationship of domestic dependency, including same sex partners.

Force Majeure leave is separate to parental leave and cannot be treated as any other form of leave i.e. sick leave, adoptive leave, maternity leave or annual leave.

Force Majeure leave is limited to a maximum of 3 days in 12 consecutive months, or 5 days in 36 consecutive months. Absence for part of a day is counted as one day of Force Majeure leave

During Force Majeure leave, an employee is regarded as being in the employment of the employer and retains all of his employment rights. There is no minimum period of employment required for an employee to be entitled to Force Majeure leave.

6.1 Confirmation of Force Majeure Leave Taken

When an employee takes Force Majeure leave, he shall give his employer, written confirmation that he has taken such leave. The confirmation shall include the following information:

¹⁰ Section 13 as amended by Parental Leave (Amendment) Act 2006

- Employee name,
- Employee PPSN,
- Name and address of employer,
- Name and address of injured/ill person,
- Relationship to employee,
- Nature of injury/illness,
- Dates of Force Majeure leave,
- Signature of the employee.

Notice to Employer of Force Majeure Leave

This form, or a form containing the information and declaration referred to in this form, must be completed by an employee who takes Force Majeure leave as soon as reasonably practicable after the leave is taken:

Name of employee _____

PPS Number _____

Name & address of employer _____

Name & address of injured/ill*
person during Force Majeure leave _____

Relationship to employee _____

Nature of injury*/illness* _____

Date(s) of Force Majeure leave _____

I confirm that I have taken Force Majeure leave on the above mentioned dates because for urgent family reasons, owing to the injury to*/illness of* the person specified above, my immediate presence at that person's address was indispensable.

Declaration

I declare that the information given above is true and complete.

Signature of employee _____

Date _____

*Delete as appropriate

Case Law: Carey v Penn Racquet Sports Ltd

An employee had noticed a rash on her child's leg and the child had a temperature. The mother was concerned, and she took her child to the doctor and the chemist. It later transpired to be nothing serious.

The woman claimed one day of force majeure leave, but the employer refused to accept that she was entitled to the leave and deducted a day's pay from her. The Employment Appeals Tribunal (EAT) ruled against the woman and the case was appealed to the High Court.

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The High Court found that the tribunal's approach to the case was wrong. It had taken the view that the reason the force majeure leave was refused was that the rash turned out to be harmless. This was judging with hindsight. The Court found that the matter should have been looked at from the worker's point of view at the time she made the decision not to go to work. The Court also held that an employee could not be assumed to have medical knowledge he/she did not possess.

Case Law: McGale v Liebherr Container Cranes Ltd.

An employee's wife became violently ill. They had a baby of less than twelve months who was on a special diet. The employee's wife was extremely weak and could not look after their child. The employee stayed at home to care for his wife and child and applied for force majeure leave in respect of that day. His employer refused his application stating that his presence was not indispensable. The Employment Appeals Tribunal and the courts also found that the employee's presence was not indispensable, and the force majeure leave was not granted.

Case Law: Dunnes Stores

A High Court case was heard in February 2002, involving Dunnes Stores and a female employee. The woman claimed one day of force majeure leave when she had to stay at home to look after her sick child, due to the fact that nobody else was available to do so. The employer refused to accept that she was entitled to a day's force majeure leave and deducted a day's pay from her. The Employment Appeals Tribunal (EAT) ruled in favour of the employee and the case was appealed to the High Court. The EAT had stated that it was the parent who had the right to decide whether force majeure leave was appropriate and in effect that each case should be judged on its own merits. The High Court upheld the ruling of the EAT.

6.2 Compassionate Leave

Force Majeure leave does not apply in the case of the death of a family member. Instead compassionate leave may apply should the employer agree. There is no general employment legislation governing compassionate leave, in which case it is granted at the employer's discretion.

For example, employees working in the public health service for the Health Service Executive (HSE) are entitled to 5 days compassionate leave on the death of a spouse, partner or child or 3 days compassionate leave on the death of an immediate family member (i.e. father, mother, brother, sister, father-in-law or mother-in-law).¹¹

7. Penalisation

The Act prohibits an employer from penalising an employee for exercising or proposing to exercise his entitlement to parental leave, force majeure leave or his option to request a change to his working hours or work pattern on returning from parental leave.

Penalisation of an employee includes the following:

- Dismissal of the employee
- Unfair treatment of the employee, including selection for redundancy
- An unfavourable change in the conditions of employment of the employee.

¹¹ <http://circulars.gov.ie/pdf/circular/hse/2012/16.pdf>

7.1 Protection against Penalisation

Where an employee is dismissed as a result of exercising his right to parental leave, force majeure leave or requesting a change to his working hours, it is regarded as an unfair dismissal. Disputes regarding the dismissal of an employee are dealt with under the **Unfair Dismissals Acts 1977 to 2015**, as opposed to being dealt with under this Act.¹²

An employee who is entitled to return to work following a period of parental leave and is not permitted to do so by his employer, shall be regarded as having been unfairly dismissed on the date he was entitled to return to work, and the dismissal will be regarded as an unfair dismissal for the purposes of the **Unfair Dismissals Acts 1977 to 2015**, unless there are substantial grounds justifying the dismissal. If the company is no longer in existence (e.g. due to insolvency or liquidation) when the employee is due to return to work, it will be regarded as giving rise to a redundancy situation under the **Redundancy Payments Acts 1967 to 2022**. However, nothing in the Act prevents an employee resigning while on parental leave.

Where an employee informs his employer that he will not be returning to work after the expiry of a period of parental leave, it is best practice for the employer to request a written letter of resignation from the employee confirming the date he wishes to leave his employment. Under no circumstances should an employer assume that the date of leaving occurs before the date the employee is due to return to work, unless otherwise stated in a resignation letter.

8. Records

An employer is required to keep a record of parental leave and Force Majeure leave taken by his employees, specifying the period of employment of each employee and the dates and times of the leave taken. Parental leave records must be retained for a period of 12 years while records of Force Majeure leave must be retained for a period of 8 years. Where an employer fails to keep such records, he may be liable to a Class C fine of up to €2,500.

9. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled “Introduction to Employment Law”. If an employee is successful in taking an action against his employer the Adjudication Officer will issue a determination, which shall do one or more of the following:¹³

- The grant of parental leave to the employee for a specific period, to be taken at a specified time in a specified manner,
- Compensation payable by the employer to the employee that is just and equitable, but not exceeding 20 weeks' pay, or
- An award of leave and compensation.

Pay includes allowances in the nature of pay and benefits in lieu of or in addition to pay.

An Adjudication officer can also direct that:

- If due to illness of the employee, parental leave can be postponed and taken at a later date, even if the child has exceeded the age threshold,

¹² Section 16A inserted by the Parental Leave (Amendment) Act 2006 as amended by European Union (Parental Leave) Regulations 2013

¹³ Section 32 as amended by the Workplace Relations Act 2015

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- Parental leave be postponed for a specified period if he is satisfied that the employee taking parental leave would have a substantially adverse effect on the business.¹⁴

Disputes related to dismissal must be referred under the **Unfair Dismissals Acts 1977 to 2015** and disputes relating to redundancy must be referred under the **Redundancy Payments Acts 1967 to 2022**.

An employer may also refer a dispute regarding an employee's entitlements under this Act to the WRC.

10. Work Life Balance and Miscellaneous Provisions Act 2023

EU Directive 2019/1158 sets out minimum entitlements for paternity, parental and carer's leave and also sets out additional rights such as the right to request flexible working arrangements. Some of these entitlements were already provided for under Irish legislation. The additional entitlements are being provided for in the **Work Life Balance and Miscellaneous Act 2023** which will primarily modify the Parental Leave Acts. This Act was signed by the President on 4th April 2023, but is subject to a Commencement Order. The main changes being introduced by the Act are as follows:

10.1 Leave for Medical Care Purposes

Employees will be entitled to up to 5 days unpaid leave in any 12 month period (leave for medical care purposes) for the purpose of providing care or support to any of the following who require significant care or support for a serious medical reason:

- Spouse/civil partner or cohabitant of the employee,
- A child of the employee or an adopted child or a child where the employee is acting in loco parentis,
- A parent or grandparent of the employee,
- A brother or sister of the employee, or
- A person other than any of the above who resides in the same household as the employee.

There is no minimum service requirement for an employee to be entitled to leave for medical care purposes.

Leave for medical care purposes may consist of 1 or more days, subject to a maximum of 5 days in any consecutive period of 12 months. Absence for part of a day will count as 1 day. An employee will be required to notify his employer, that they intend to take, or have taken, the leave, as soon as is reasonably practicable.

The notification should include the dates of leave and a statement of facts entitling the employee to the leave and be signed by the employee. An employer will be entitled to request information from the employee which he may reasonably require regarding:

- The relationship between the employee and the person requiring the care,
- The nature of personal care or support given by the employee,
- A medical certificate or other reasonable evidence stating that the person was in need of significant care or support for a serious medical reason.

¹⁴ Section 21 (4) as amended by the Workplace Relations Act 2015

The employer will be required to retain a copy of the notification and provide the employee with a written confirmation confirming receipt of the notification.

The Act provides for protection of employment with employees being entitled to return to the job they held immediately prior to commencing the leave. Employees will also be protected from penalisation.

Leave for medical care purposes will be in addition to Force Majeure leave and Carer's leave. Unlike Force Majeure leave, leave for medical care purposes can be availed of for planned events, such as accompanying a relative to/from a medical appointment, taking time off to care for a relative following surgery, etc.

10.2 Domestic Violence Leave

Employees will be entitled to up to 10 days paid leave in any 12 month period where the employee, or a relevant person, has experienced or is currently experiencing domestic violence.

The purpose of the leave is to allow the employee to obtain, or assist a relevant person in obtaining, medical attention, services from a victim organisation, counselling, legal advice or to relocate temporarily or permanently.

A relevant person in relation to an employee includes:

- A spouse or civil partner,
- Cohabitant,
- Person with whom the employee is in an intimate relationship, or
- A child (including a child who the employee is *in loco parentis*) who has not attained full age (under 18), or a child who has attained full age but is suffering from a physical or mental disability to the extent that they are unable to live independently of the employee.

Domestic violence includes violence, threat of violence, sexual violence, or acts of coercive control committed against an employee or a relevant person by another person who is:

- The spouse or civil partner of the employee or relevant person,
- The cohabitant of the employee or relevant person,
- Person with whom the employee or relevant person was, or is, in an intimate relationship, or
- A child of the employee or relevant person who has attained full age and is not suffering from any physical or mental disabilities.

There is no minimum service requirement for an employee to be entitled to Domestic Violence Leave. The leave may consist of 1 or more days, subject to a maximum of 10 days in any consecutive period of 12 months. Absence for part of a day will count as 1 day. An employee will be required to notify his employer that he has taken the leave as soon as is reasonably practicable. The notification should include the dates of leave.

Regulations will be published which will detail how pay should be calculated for employees who take Domestic Violence leave.

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10.3 Right to Request a Flexible Working Arrangement for Caring Purposes

An employee who is:

- The parent of a child and is providing care to that child, or
- Providing personal care or support to a relative (as outlined above in leave for medical care purposes) or a person who lives in the same household as the employee,

will be entitled to request a flexible working arrangement for the purpose of providing care and support to that person.

A **flexible working arrangement** means a working arrangement where an employee's working hours or patterns are adjusted, including the use of remote working arrangements, flexible working schedules or reduced working hours.

A flexible working arrangement for the care of a child will end on:

- the child's 12th birthday,
- the expiry of a period of 2 years from the date of the adoption order in the case of an adopted child who is aged between 10 and 12 years at the time of the adoption order, or
- the child's 16th birthday in respect of a child with a disability or long-term illness, or until the child ceases to have the disability, if earlier,

An employee will be required to have 6 months continuous service with the employer before commencing a flexible working arrangement. Where an employee leaves and subsequently recommences employment with that same employer within 26 weeks, both periods of employment will be aggregated to calculate the employee's continuous service.

An employee must give his employer at least 8 weeks' notice, in writing, requesting a flexible working arrangement. The notice must include:

- The date of commencement and the duration of the flexible working arrangement, and
- The employee's signature.

The employer can request information which he may reasonably require including:

- In the case of a child, a copy of the child's birth certificate or a certificate of placement,
- In the case of all other persons, the relationship between the employee and the person requiring the care, the nature of care or support given by the employee, a medical certificate or other reasonable evidence stating that the person is in need of significant care or support for a serious medical reason.

An employer must consider the request, taking into account the needs of the business and the needs of the employee, and within 4 weeks:

- Approve the request, and prepare a written agreement signed by both parties setting out the details of the flexible working arrangement along with the date of commencement;
- Refuse the request, and provide the employee with written notice of reasons for the refusal (the Act does not list any specific grounds for refusal), or
- Notify the employee that the employer has extended the 4 week response period by a further period of up to 8 weeks where the employer is having difficulty assessing the viability of the request.

10.3.1 Changes to a Flexible Working Arrangement

Where a flexible working arrangement is in place, an employer and employee may agree, in writing, to amend the arrangement to include:

- the postponement of the arrangement,
- the duration of the arrangement be curtailed, or
- the form of flexible working arrangement may be varied.

Where a flexible working arrangement has not yet commenced and the employee becomes ill or incapacitated such that they are unable to care for the person for whom they requested the flexible working arrangement, the employee may postpone the commencement by notifying the employer in writing accompanied by evidence of the illness or incapacity until such time as they have recovered.

10.3.2 Termination of a Flexible Working Arrangement by Employer

An employer is entitled to terminate a flexible working arrangement (before or after it has commenced) where he is satisfied that it would have, or is having, a substantial adverse effect on the business, for example due to seasonal variations in the work, unavailability of other employees to cover the employee's duties, nature of the employee's duties, the number of employees employed, etc.

An employer is also required to consider the needs of the employee and the requirements of the Code of Practice before terminating the arrangement. An employer is required to consult with an employee in advance of terminating a flexible working arrangement. The employer must inform the employee of his intention and allow the employee a period of 7 days to respond. Where the employer proceeds to terminate the arrangement, he must provide the employee with a written summary of the grounds for the termination and indicate the date (which cannot be earlier than 4 weeks) on which the employee must return to their previous working arrangement.

An employer is also entitled to terminate the arrangement where the employer has reasonable grounds for believing that the employee is not using the arrangement for the purpose for which it was approved, subject to the employer following the above consultation and notification requirements.

10.3.3 Early Return to Work by Employee

Where an employee wishes to terminate their flexible working arrangement and return to their previous working arrangements early, he must notify his employer in writing outlining the reasons for the request and the proposed return date. The employer must consider the request having regard to both the business and employee needs. The employer must notify the employee in writing of his decision within 4 weeks of receipt of the request. If the employer refuses the request, he must outline the reasons for his refusal.

On the expiry of the flexible working arrangement, the employee will be entitled to return to their previous working arrangements.

10.4 Requests for Remote Working Arrangements

The Act provides that employees with a minimum of 6 months continuous service may make a request for remote working arrangements. An employee must give at least 8 weeks' notice to his employer specifying the details of the remote working arrangement. The notice should contain the date of commencement and, if applicable, the date of cessation, and

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- The employee's reasons for making the request,
- The details of the proposed remote working location, and
- Any information as may be specified in the Code of Practice on the suitability of the proposed remote working location.

An employee may be required to supply any additional information as the employer reasonably requires in relation to the request. An employee may withdraw his request prior to any agreement is reached with the employer.

An employer must consider the request, taking into account the needs of the business, the needs of the employee, and the requirements of the Code of Practice, within 4 weeks:

- Approve the request, and prepare a written agreement signed by both parties setting out the details of the remote working arrangement,
- Refuse the request, and provide the employee with written notice of reasons for the refusal, or
- Notify the employee that the employer has extended the 4 week response period by a further period of up to 8 weeks where the employer is having difficulty assessing the viability of the request.

A Code of Practice will be prepared to inform employees and employers of the steps involved and the obligations on each party when making a request for remote working.

The provisions outlined above in relation to termination of, or changes to, flexible working arrangements or the early return to work by an employee, apply in a similar manner to remote working arrangements.

A remote working agreement is subject to the condition that the employee continues to perform all his duties of employment. The employer will be able to terminate the remote working arrangement in situations where he has reasonable grounds to believe the employee is not performing all his duties of employment, subject to the employer following the above consultation and notification requirements.

10.5 Records

An employer is required to retain records of leave for medical care purposes, domestic violence leave, flexible working arrangements, or remote working arrangements for a period of 3 years.

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Sick Leave Act 2022

- 1. Main Provisions**
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-

1. Main Provisions

The **Sick Leave Act 2022** commenced on 1st January 2023 and provides employees, who have 13 weeks continuous service, with a minimum entitlement to sick leave and sick pay, where they are unable to work due to illness or injury.

This Act aims to provide a minimum level of protection for employees whose employer does not otherwise provide a sick pay scheme, and brings Ireland in line with other European Countries. There is nothing to prevent employers from offering more favourable terms. Where this is the case, the employer sick pay scheme will be operated as a substitute for statutory sick leave, not in addition to statutory sick leave.

2. Covered Employees

The Act applies to employees, **who have at least 13 weeks continuous service**, who are employed:

- Under a contract of employment, whether full-time, part-time, permanent or fixed-term,
- As apprentices,
- As a temporary agency worker within the meaning of the **Protection of Employees (Temporary Agency Work) Act 2012** - the person liable to pay the employee's wages is deemed to be the employer, or
- As public or civil servants or office holders of the State.

2.1 Continuous Service

An employee's service is regarded as continuous unless he is dismissed or voluntarily leaves his job. An employee is deemed to have voluntarily left his employment where he decides to claim a statutory redundancy payment following the requisite period of lay-off or short time.

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Where an employee ceases to be employed by an employer and subsequently recommences employment with that employer within 26 weeks, the employee's continuous service will be deemed to be based on the aggregate of both periods of employment.

Example 1

Amber was employed on a temporary contract for 6 weeks by Temp Ltd. After an interval of 6 weeks, Amber was subsequently reemployed by Temp Ltd on a 12 week contract. Does Amber accrue 13 weeks continuous service?

Solution 1

Amber accrues 13 weeks service after the 7th week of reemployment (i.e. as the interval between the contracts does not exceed 26 weeks, both periods are aggregated to determine the duration of her continuous service).

A lock-out or lay-off is not regarded as a termination of the employee's service by the employer. Strike action taken by an employee does not amount to the employee voluntarily leaving his employment. Continuity of employment is not broken by the dismissal of an employee and the immediate re-employment of the employee, for example the reinstatement or reengagement of an employee under the **Unfair Dismissals Acts 1977 to 2015**. The transfer of a business is not regarded as a break in continuous service.

2.2 Calculating the Period of Continuous Service

The following periods are included when calculating the period of continuous service:

- An absence by an employee arising due to service in the Reserve Defence Forces.
- An absence of up to 26 weeks due to lay-off, sickness or injury, or by agreement with the employer.
- If in any week, or part of a week, an employee was absent due to a lock-out, that week counts as a period of service.
- If in any week, or part of a week, an employee was absent due to a strike or lock-out in any business other than that in which he is employed, that week counts as a period of service.
- Absence on maternity, paternity, parent's adoptive, carer's, parental or force majeure leave.

However, the following periods are not counted when calculating the period of continuous service:

- Any week in which an employee is not normally expected to work at least 18 hours or more,*
- An absence in excess of 26 weeks due to lay-off, sickness or injury, or by agreement with the employer, or
- An absence due to an employee taking part in a strike relating to the business in which the employee is employed.

* The Department of Enterprise, Trade and Employment has confirmed that employees who regularly work less than 18 hours per week are covered by the **Sick Leave Act 2022**. The Department is satisfied that by virtue of the application of the **Protection of Employees (Part-Time Work) Act 2001** (which in general prohibits less favourable treatment of part-time workers), that such a worker is brought within the remit of the **Sick Leave Act 2022** and would therefore be entitled to sick leave on the same basis as their full-time counterpart.

Example 2

Andrew commenced employment in January. He was absent on Parent's leave for 4 weeks in February. He was absent on certified sick leave in April. Does Andrew have 13 weeks continuous service to qualify for statutory sick leave?

Solution 2

Yes, he has accrued 13 weeks continuous service at the end of March as his absence on Parent's leave counts as service.

Example 3

Ben commenced employment in January. His employer granted him 4 weeks unpaid leave during March. He was absent on certified sick leave in April. Does Ben have 13 weeks continuous service to qualify for statutory sick leave?

Solution 3

Yes, he has accrued 13 weeks continuous service at the end of March as his absence during March was agreed by his employer and it does not exceed 26 weeks.

For the remainder of this chapter, it is assumed that employees have at least 13 weeks' continuous service, unless otherwise stated.

3. Statutory Sick Leave

Since 1st January 2023, an employee has an entitlement to statutory sick leave (SSL) in respect of any day which he is scheduled to work, but is incapable of doing so due to illness or injury.

For 2023, an employee is entitled to 3 days SSL. An employee is required to provide his employer with a medical certificate, in English or Irish, signed by a medical practitioner certifying that he is unable to work on the days specified in the certificate, in order to be entitled to Statutory Sick Pay (SSP).

SSL days may be consecutive days or non-consecutive days.

The Act provides the Minister for Enterprise, Trade and Employment with the power to vary the number of SSL days upwards, but not downwards, by means of a Ministerial order. An order can increase the number of SSL days by up to a maximum of 3. The Minister cannot make the first order before the expiry of 12 months from the date of commencement of the Act, and the second order cannot be made until a further 12 months have elapsed from the date of the first order. This caters for the Government's intention to increase SSL to 10 days over a 4 year period as follows:

2023	3 days
2024	5 days
2025	7 days
2026	10 days

Where an employee is employed in more than one employment, he is entitled to SSL in respect of each employment assuming he has 13 weeks' continuous service with each employer.

Where an employee submits a medical certificate in respect of a public holiday which he was scheduled to work (e.g. many employees in the retail or hospitality sectors work on public holidays), he would be entitled to both his SSP and public holiday entitlement subject to the

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qualifying conditions for each being satisfied. If the employee was not rostered to work on the public holiday or where an employer closes on a public holiday, if the employee produced a medical certificate covering the public holiday, he would not be entitled to SSL as the employee was not rostered to work on that day.

As a day is not defined in the Act, it must be given its everyday meaning (i.e. it runs from midnight to midnight). Hence, if an employee was due to work from 8pm to 4am, but was medically certified as being unable to work, this constitutes 2 days for SSL purposes.

4. Statutory Sick Pay

The **Sick Leave Act 2022 (Prescribed Daily Rate of Payment) Regulations 2022** confirm that SSP should be calculated using 1 of the following methods:

Method 1

If the employee's pay is calculated by reference to

- (i) a **fixed wage**, salary, allowance or bonus for each week, month or any other fixed period, or
- (ii) a **fixed hourly** or other time rate for a set number of hours (or other period of time) per week, month or any other fixed period,

the gross amount of SSP payable in respect of any statutory sick leave day is the **lesser of €110 or 70% of the sum (including any regular bonus or allowance)** the amount of which does not vary in relation to the work done by the employee but **excluding any pay for overtime or commission**) paid to the employee in respect of the normal daily hours last worked by him or her before the statutory sick leave day.

Example 4

Linda was absent on certified sick leave and is entitled to SSP. Calculate Linda's daily rate of SSP assuming she earns a weekly salary of €750 in respect of a 5 day week.

Weekly Salary		€750.00
Daily rate of pay	€750 / 5 days =	€150.00
Daily rate of SSP	€150 x 70% =	€105.00

Example 5

Tim was absent on certified sick leave and is entitled to SSP. Calculate Tim's daily rate of SSP assuming he earns a weekly salary of €900 in respect of a 5 day week.

Weekly Salary		€900.00
Daily rate of pay	€900 / 5 days =	€180.00
Daily rate of SSP	€180 x 70% = €126 restricted to	€110.00

Example 6

Ciara works a 35 hour week, 7 hours a day Monday to Friday. She is paid a basic salary of €402.50 per week (€11.50 per hour). Ciara is also paid commission. Her average weekly commission over the last 13 weeks is €320, giving rise to an average weekly gross pay of €722.50. Calculate Ciara's daily rate of SSP.

Weekly salary (excluding commission)		€402.50
Daily rate of pay	€402.50 / 5 days =	€80.50
Daily rate of SSP	€80.50 x 70% =	€56.35

Example 7

Dan works a 40 hour week, 8 hours a day Monday to Friday. He is paid €15 per hour. Dan regularly works overtime and his average weekly overtime amounts to €75. Calculate Dan's daily rate of SSP.

Daily rate of pay	$8 \text{ hours} \times €15 =$	€120.00
Daily rate of SSP	$€120 \times 70\% =$	€84.00

Method 2

If the employee's pay is calculated by reference to a **fixed hourly** or other time rate for a **variable number of hours** (or other period of time) per week, month or any other fixed period, the gross amount of SSP payable in respect of any statutory sick leave day shall be the **lesser of €110 or 70% of the sum (including any regular bonus or allowance)** the amount of which does not vary in relation to the work done by the employee but **excluding any pay for overtime or commission**) that would have been payable to the employee had he or she worked the statutory sick leave day.

Example 8

Enda is at college and is employed in a shop on a part-time basis. He works 4 hours on a Tuesday, 6 hours on a Friday, and 8 hours on a Saturday. He is paid the national minimum wage of €11.30. Calculate Enda's daily rate of SSP if he was absent on certified sick leave on a Tuesday, Friday or Saturday.

Tuesday	$4 \text{ hours} \times €11.30 \times 70\% =$	€31.64
Friday	$6 \text{ hours} \times €11.30 \times 70\% =$	€47.46
Saturday	$8 \text{ hours} \times €11.30 \times 70\% =$	€63.28

Example 9

Frank is at college and is employed in a pub on a casual part-time basis. He has no set hours per week. This week he is scheduled to work 6 hours on Friday night, from 6pm to 12am and for 5 hours on Sunday from 5.30pm to 10.30pm. He is paid the national minimum wage of €11.30 from Monday to Saturday, and he is paid time and a quarter for Sunday work. Frank phoned in sick on Friday and subsequently provided a medical certificate which covered Friday and Sunday. Calculate Frank's daily rate of SSP for each of these days.

Friday	$6 \text{ hours} \times €11.30 \times 70\% =$	€47.46
Sunday	$5 \text{ hours} \times €11.30 \times 1.25 \times 70\% =$	€49.44

Method 3

If the employee's pay is **not calculated by reference to any of the matters referred to in Method 1 or Method 2** (i.e. where the employee's pay is calculated by reference to a variable amount), the gross amount of SSP payable in respect any statutory sick leave day shall be the **lesser of €110 or the sum that is equal to 70% of the average hourly rate of pay (including any regular bonus or allowance)** the amount of which does not vary in relation to the work done by the employee **but excluding any overtime or commission**) of the employee, calculated over:

- (i) the period of 13 weeks ending immediately before the statutory sick leave day commences,
or

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- (ii) if no time was worked by the employee during that period, the period of 13 weeks ending on the day on which time was last worked by the employee before the statutory sick leave day commences,

multiplied by the number of hours that he or she was due to work on the statutory sick leave day.

According to the Department of Enterprise, Trade and Employment, as most employees receive some element of fixed basic rate of pay, they believe that for most employees, SSP will be calculated using either Method 1 or Method 2 above.

Where an employee is certified as being sick for a continuous period which exceeds 3 days (excluding Sundays) he may be entitled to claim Illness Benefit from the DSP assuming he meets the qualifying PRSI contribution conditions. This is covered in more detail in the Chapter entitled “Taxation of Short-term Social Insurance Benefits”.

5. More Favourable Conditions in a Contract of Employment

The Act does not prevent employers from operating a sick pay scheme which is as favourable, or indeed more favourable, to an employee than SSL. Where this is the case, the employer sick pay scheme will be operated **as a substitute for SSL, not in addition to SSL**. Additionally, the Act states that the:

“obligations under this Act shall not apply to an employer who provides his or her employees a sick leave scheme where the terms of the scheme confer, over the course of a reference period set out in the scheme, benefits that are, as a whole, more favourable to the employee than statutory sick leave.”

When determining whether an employer’s sick pay scheme is more favourable, the following should be considered:

- The period of service required before sick leave is payable,
- The number of days that an employee is absent before sick leave is payable,
- The period for which sick leave is payable,
- The amount of sick leave payable, and
- The reference period of the sick leave scheme.

For example, the Act will not apply to public service employers who operate the Public Service sick leave scheme, where employees are entitled to the following sick leave payments:

- A maximum of 92 days sick leave on full pay in a rolling one-year period,
- Followed by a maximum of 91 days sick leave on half pay in a rolling one-year period,
- Subject to a maximum of 183 days paid sick leave in a rolling four-year period.

Where the sick leave provisions in a contract of employment become less favourable than SSL, the contract shall be deemed to be modified to prevent less favourable treatment.

6. Exemption from Obligation to pay Statutory Sick Pay

An employer (or employer's representative) in financial difficulty can apply to the Labour Court for a temporary exemption from paying SSP. Where more than one employee is involved, the employer must have the consent of the majority of the employees.

The Labour Court will not grant an exemption from paying SSP unless it is satisfied that the employer has the consent of the majority of employees, or their representative, or a trade union representing the majority of employees, and the employees agree to abide by the decision made by the Labour Court, and the employer is experiencing severe financial difficulties.

Where the Labour Court is not satisfied that the majority of employees or their representative consent to an application for exemption from paying SSP, the Labour Court may grant an exemption assuming the following conditions are met:

- The employer has informed the employees concerned of the financial difficulties of the business, and
- Has attempted to come to an agreement with the employees, their representative or trade union in relation to a proposed exemption from paying statutory sick pay, and
- The Labour Court is satisfied that the employer is unable to pay SSP to the extent that, if the employer was compelled to pay SSP, it could lead to lay-offs or redundancies, or the sustainability of the employer's business would be adversely affected.

Where an exemption is granted, it cannot be for less than 3 months, nor can it exceed a period of 1 year. The Labour Court will give its decision in writing to the parties involved and will maintain a register of all decisions which will be publicly available.

An exemption decision of the Labour Court can only be appealed to the High Court on a point of law.

7. Income Tax, PRSI and USC Implications

SSP is an emolument of the employment in the same way as holiday pay is an emolument of an employment, and is fully taxable. It should be recorded as part of the employee's gross pay, pay for income tax, pay for USC, pay for EE PRSI and pay for ER PRSI.

As the payment is reckonable for PRSI purposes, the employee should be awarded an insurable week in respect of the days he is in receipt of SSP.

There is no legal requirement for SSP to be included as a separate pay element on an employee's payslip, however, it may be good practice for an employer to do so as it would illustrate to an employee that they have been paid SSP and would also create a better audit trail for the employer.

8. Employment Protection

An employee's statutory and contractual rights will be protected during any period of SSL. Absences on SSL cannot be treated as part of any other type of leave from employment (e.g. annual leave, maternity leave, adoptive leave, paternity leave, parent's leave, etc.). An employee is not entitled to be paid for any additional sick leave in excess of SSL unless it is provided for in his contract of employment or collective agreement.

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Employees will accrue annual leave and public holidays during an absence on SSL subject to any qualifying conditions as outlined in the **Organisation of Working Time Act 1997**.

If an employee is sick on a day of annual leave and produces a medical certificate in respect of that day(s), the sick day, or days are not included in his annual leave. In other words, this is treated as a day of certified sick leave for which the employee may be entitled to SSP, instead of a day of annual leave. The employee's annual leave records and holiday pay may need to be revised to reflect this change.

Absences on SSL are reckonable service for redundancy purposes and do not break an employee's continuous service.

Where an employee or apprentice, is on probation or undergoing training in relation to his employment, is absent on SSL, the employer may suspend the time on probation, training or apprenticeship until the employee returns to work.

9. Protection from Penalisation

The Act prohibits an employer from penalising or threatening to penalise an employee for proposing to exercise or having exercised his entitlement to SSL.

Penalisation means any act or omission by an employer that has a detrimental effect on any term or condition of the employee's employment, and includes:

- Suspension, lay-off or dismissal of the employee or the threat of either,
- Demotion or loss of opportunity for promotion,
- Transfer of duties,
- Change of location of place of work,
- Reduction in salary,
- Change in working hours,
- Imposition of a reprimand or other penalty, or
- Coercion or intimidation.

If the penalisation constitutes a dismissal of the employee under the **Unfair Dismissals Acts 1977 to 2015**, an employee is not entitled to claim relief under both the **Sick Leave Act 2022** and the **Unfair Dismissals Acts 1977 to 2015**.

Where an employee is dismissed for reasons relating to SSL, he is required to have 1 year's service to bring a claim under the **Unfair Dismissals Acts 1977 to 2015**.

10. Records

An employer is obliged to keep the following records for a period of 4 years to show that the provisions of the Act are being complied with:

- Period of employment of each employee who availed of SSL,
- Dates and times of SSL in respect of each employee who availed of it,
- Rate of SSP paid to each employee who availed of SSL.

An employer who fails to keep records, without reasonable cause, is guilty of an offence and shall be liable on summary conviction to a Class C fine not exceeding €2,500.

11. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled “Introduction to Employment Law”.

Complaints under this Act must be submitted to the Workplace Relations Commission within 6 months beginning on the day immediately following the date of the occurrence of the dispute. For example, an employee may have been absent on SSL at the beginning of the month, but a dispute might only arise at the end of the month when the employee did not receive their SSP in their monthly pay.

If an employee is successful in taking an action against his employer, the Adjudication Officer will issue a determination, which shall do one or more of the following:

- Declare the complaint was or was not well founded,
- Require the employer to comply with the relevant provision, and/or
- Require the employer to pay the employee compensation which is fair and equitable having regard to all the circumstances, but not exceeding 4 weeks’ remuneration.

Where a decision of an Adjudication Officer is appealed to the Labour Court, the Labour Court may order an employer to pay the employee compensation which is just and equitable having regard to all the circumstance but shall not exceed 4 weeks’ remuneration.

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Carer's Leave Act 2001

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Duration of Carer's Leave**
 - 4. Application and Approval**
 - 5. Carer's Benefit Entitlement**
 - 6. Employment Protection**
 - 7. Income Tax, PRSI and USC Implications**
 - 8. Termination of Carer's Leave**
 - 9. Right to Return to Work**
 - 10. Records**
 - 11. Redress Provisions**
-

1. Main Provisions

This Act provides an entitlement for employees to avail of temporary unpaid carer's leave from their employment, to enable them to care personally for a person who requires fulltime care and attention (referred to hereafter as a relevant person).

2. Covered Employees

This Act applies to all employees working under a contract of employment or apprenticeship, public or civil servant, or a person employed through an employment agency. With regard to agency workers, whichever party is liable to pay the wages (the agency or the client company) is the employer for the purpose of the Act.

However, although all employees are covered by the Act, an employee who wishes to avail of carer's leave must have completed at least 12 months continuous service with the employer from whose employment the leave is to be taken, before the commencement date of the leave.

Employees with less than 12 months continuous service are also covered under the Act. However, in practice this would really only apply to the extent that they cannot be dismissed or penalised for proposing to exercise their right to carer's leave.¹

3. Duration of Carer's Leave

An employee has a statutory entitlement to a minimum of 13 weeks and a maximum of 104 weeks unpaid carer's leave in respect of any one relevant person.² Carer's leave in respect of any one

¹ Section 6(1)

² Sections 6 & 8, as amended by the Social Welfare Law Reform and Pensions Act 2006

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relevant person may be taken as a continuous period of 104 weeks, or in separate periods of which the combined duration does not exceed 104 weeks.

The minimum statutory entitlement that may be taken in any one period at the discretion of the employee is 13 weeks. An employer may refuse to permit an employee to take carer's leave for a period of less than 13 weeks, however, the employer must have reasonable grounds for refusing the leave, and the employee must be notified in writing.

Where an employee claims carer's leave and this is to be taken in a number of periods rather than a single period of 104 weeks, he will not be entitled to commence the next period of carer's leave, until at least 6 weeks have passed since the end of the previous period of carer's leave.

Where an employee has taken carer's leave in respect of a relevant person, he cannot commence a period of carer's leave, in respect of another relevant person, until a period of 6 months has elapsed.

An employer and an employee may agree to terms which are more favourable to the employee than any of the statutory terms outlined above.

Example 1

John has applied for carer's leave in respect of his invalid mother. He has decided to take the leave in two periods, one period of 50 weeks duration and the second of 54 weeks duration. He must wait a minimum of six weeks from the end of the 50 week period before he can take the 54 week period of carer's leave.

3.1 Conditions

An employee may take carer's leave under this Act, if the following conditions are satisfied:³

- The leave must be taken for the purposes of personally providing full-time care and attention to a person, who is objectively assessed by the Department of Social Protection (DSP), as being in need of full-time care and attention (i.e. a relevant person),
- The carer may attend an educational or training course or take up voluntary or community work for up to 18.5 hours a week.
- The carer must not be employed or self-employed outside of his home for more than 18.5 hours per week while on carer's leave. The carer can be employed or self-employed for up to 18.5 hours per week but weekly net income cannot exceed €350. This amount refers to the net take home pay of the carer after deduction of Income tax, PRSI, USC, pension contributions, Additional Superannuation Contribution (ASC), trade union subscriptions and deductions for health insurance.
- The leave terminates when the employee ceases to personally provide full-time care and attention to the relevant person.
- An employee may not be on carer's leave, in respect of two or more relevant persons, at any one time. However, an exception arises where two relevant persons reside together, in which case the total leave cannot exceed 208 weeks. This exception may only be exercised once.
- Only one employee may be on carer's leave in respect of any one relevant person, at any one time.
- Entitlement to Carer's Benefit is not a condition for entitlement to carer's leave.⁴

³ Section 6(1)

⁴ Section 6(7)

There is no requirement that a relevant person should be a relative of the person applying for carer's leave. As the legislation stands, a relevant person may be a relative, a friend or even a neighbour, provided they meet the criteria outlined above.

A "relevant person" is defined in the **Social Welfare Consolidation Act 2005** as a person who has such a disability that he requires full-time care and attention.

Full-time care and attention involves the continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or continual supervision in order to avoid any danger to him.

4. Application and Approval

An employee must apply to the DSP for a decision, on whether the person to be cared for is a relevant person, for the purposes of this Act.⁵ The written decision of the deciding officer must be provided to the employer and the employee must give his employer written notice of his intention to take carer's leave, at least 6 weeks in advance, except where in exceptional or emergency circumstances, it is not reasonably practicable.⁶

The employee's application to take carer's leave must include the following information:

- The date on which the employee intends to commence carer's leave,
- The duration of the leave,
- The manner in which the employee proposes to take the leave,
- A statement that an application for a decision on whether or not the person to be cared for is a relevant person has been made to the DSP,
- The employee's signature and date.

When the terms of the leave are agreed, the employer and the employee shall prepare a "**confirmation document**" which includes the date of commencement, the duration, the manner in which the leave will be taken, and signed by both the employee and employer. The confirmation document is generally prepared after the employee has received a favourable decision from the DSP confirming that the person to be cared for is a relevant person, (as a copy of the DSP decision must be given to the employer) not less than 2 weeks before the date on which the leave is due to commence.

An employee may revoke his application for carer's leave at any stage before the confirmation document has been signed. Any such revocation by the employee must be made in writing to the employer.

An employee must notify his employer of any change of circumstances, which affects his entitlement to carer's leave.

Once a confirmation document has been signed by both the employee and employer, it cannot be altered unless both the employee and employer agree to the alteration. Where the employer and employee agree to alter, postpone or vary the leave in any way, the confirmation document should be amended accordingly.

⁵ Section 6(5)

⁶ Section 9(1) & (2)

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A sample carer's leave request form and a sample confirmation document are included below:

SAMPLE CARER'S LEAVE REQUEST FORM

I hereby notify my employer that I propose to take Carer's Leave in accordance with the provisions of the **Carer's Leave Act 2001**, with effect from _____ to _____ to provide full-time care and attention to _____

I propose to take the Carer's Leave in the following manner:

- One continuous period of 104 weeks
- In periods of _____ weeks/months (each of which must be of at least 13 weeks* duration – the aggregate of which does not exceed 104 weeks).

I wish to confirm that I have made an application to the Department of Social Protection for a decision of a deciding officer of that Department that _____ in respect of whom I propose to take carer's leave, is a relevant person (i.e. is in need of full-time care and attention) for the purposes of **Social Welfare (Consolidation) Act 2005**.

Employee Signature: _____

Date: _____

Note:* Unless otherwise agreed with the employer

SAMPLE CONFIRMATION DOCUMENT

As required under the Carer's Leave Act 2001

Name of Employee: _____

Name of Employer: _____

Commencement date of Carer's Leave _____

Manner in which Carer's Leave is to be taken: _____

Duration of Period(s) of Carer's Leave: _____

Signatures:

Employee: _____ Date: _____

Employer: _____ Date: _____

5. Carer's Benefit Entitlement

Carer's Benefit is paid by the DSP to employees who are absent on carer's leave provided they satisfy certain PRSI contribution conditions. The benefit can be claimed for a total of 104 weeks in respect of each relevant person and may be claimed in one continuous period or in separate periods up to a maximum of 104 weeks to coincide with how the employee is taking carer's leave. Where Carer's Benefit is claimed for less than 6 consecutive weeks, the claimant must wait for a further 6 weeks before making another claim in respect of the same relevant person

The PRSI contribution classes which qualify for Carer's Benefit are Classes A, B, C, D, H and E.

Carer's Benefit is payable to an employee who satisfies the following conditions:

- Is aged 16 or over and under 66,
- Has been employed for at least 8 weeks (whether consecutive or not) during the previous 26 weeks, working at least 16 hours per week or 32 hours per fortnight,
- Has the qualifying PRSI contributions (as outlined below),
- The person being cared for requires full-time care and attention and is not living in a hospital, convalescent home or similar institution.
- Is not taking part in training or education or employed or self-employed outside the home for more than 18.5 hours a week with a maximum net income of €350,
- Is not living in a hospital, convalescent home or other similar institution, and
- Is living with, or in a position to provide full-time care to, a person who is in need of care.

The PRSI contribution conditions are as follows:

- 156 paid contributions since entry into insurable employment, **and**
- 39 paid contributions in the relevant tax year, **or**
- 39 paid contributions in the 12 months before the commencement of Carer's Benefit, **or**
- 26 paid contributions in the relevant tax year and 26 paid contributions in the tax year before the relevant tax year.

The *relevant tax year* is the second last income tax year (i.e. if Carer's leave commences in 2023 the relevant tax year is 2021).

- Carer's Benefit is paid by electronic transfer into a post office or directly into a current or deposit account in a financial institution. Employees can apply for Carer's Benefit using a CARB1 Form which is available on the DSP website at <https://www.gov.ie/en/service/455c16-carers-benefit/#apply>.
- This Form should be completed by the claimant and submitted to the Carer's Benefit Section of the DSP at least 10 weeks before the commencement of carer's leave.

If an individual was previously in insurable employment in another EU country, they may combine their social insurance record in that country with their Irish PRSI contributions in order to qualify for Carer's Benefit in Ireland. The last week of paid insurance must be paid in Ireland.

A person who cannot meet the required number of PRSI contributions in order to qualify for Carer's Benefit may still take carer's leave. If two or more people are sharing caring duties, only one carer can claim the benefit. If an individual does not satisfy the PRSI contribution conditions in order to qualify for Carer's Benefit, he may qualify for Carer's Allowance based on a means test.

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5.1 Rate of Carer's Benefit

Carer's Benefit is calculated as follows:

- €237 per week where the carer is providing care for 1 person
- €355.50 per week where the carer is providing care for more than 1 person

The above amounts may be increased in respect of each qualifying child residing with the claimant depending on factors such as whether the claimant resides alone or with a spouse or partner, the level of the spouse or partner's income and whether the child is under 12 or aged 12 years and over.

Carer's Benefit will cease to be paid if the relevant person fails to attend for a medical examination without good cause. Carer's Benefit is not payable while the carer is absent from the State. However, a carer may take up to 3 weeks holidays a year and continue to receive Carer's Benefit. If the relevant person dies, Carer's Benefit will continue for 6 weeks following the death.

If an individual qualifies for Carer's Benefit he will also receive a Carer's Support Grant (currently €1,850) usually on the first Thursday in June each year for each person he is caring for.

6. Employment Protection

An employee on carer's leave will be treated as if he had not been absent from his employment, so that all his employment rights will be unaffected during the leave, except the right to:

- Remuneration,
- Superannuation benefits,
- Certain annual leave,
- Certain public holidays.

An employee absent on carer's leave will be entitled to the normal public holiday and annual leave entitlements in respect of the first 13 weeks of carer's leave, for each and any relevant person.

An employee is not obliged to make pension contributions while on carer's leave.

Example 2

Joe has applied for carer's leave from his employment in respect of his aunt who has been deemed a relevant person by the DSP. He intends to commence his 104 weeks carer's leave on 9th January. He has contacted you and has queried if he is entitled to any annual leave and public holidays while he is on carer's leave and if so, how many days is he entitled to, assuming he works a 5 day week.

Solution 2

Annual Leave:

Joe is entitled to accrue annual leave in respect of the first 13 weeks of carer's leave i.e. 5 days (20 days x 13/52 weeks) and is therefore not entitled to accrue any annual leave for the remaining 91 weeks of carer's leave.

Public Holidays:

Joe is entitled to be credited with the following public holiday, which will arise during the first 13 weeks of carer's leave i.e. First Monday in February and St. Patrick's Day on 17th March.

A period of probation, training or apprenticeship, may be suspended during carer's leave, and completed when carer's leave ends.

Periods of carer's leave are not reckonable as any other type of leave i.e. sick leave, annual leave, adoptive leave, maternity leave, parental leave or force majeure leave.

The legislation makes no provisions for employees who become ill while on carer's leave. In practice, if an employee is sick while on carer's leave he may request his employer to extend the carer's leave by the length of his sick leave subject to his employer's agreement by amending the confirmation document. However, the legislation is unclear in relation to this issue and it would be at the discretion of the employer.

The Act also provides for the protection of employees from penalisation by employers, for exercising, or proposing to exercise, their entitlement to carer's leave.

Penalisation includes:

- Dismissal,
- Unfair treatment of the employee, including selection for redundancy,
- An unfavourable change in the conditions of employment.

An employee may seek relief against penalisation involving a dismissal, under the **Unfair Dismissals Acts 1977 to 2015**. It should be noted that where an employee is dismissed for exercising or proposing to exercise his right to carer's leave, the employee is not required to have one year's service to take a case under the **Unfair Dismissals Acts 1977 to 2015**.

The Acts in relation to redundancy payments, unfair dismissal, organisation of working time, national minimum wage and the protection of employees have been amended, so as to ensure employment protection of a person availing of carer's leave.

Example 3

Continuing on from Example 2 above, Joe has been granted 104 weeks carer's leave by his employer, starting on 9th January. However, in July he submits a letter advising that he had been sick for 2 weeks and has enclosed a medical certificate from his doctor. He seeks your advice in relation to his entitlements under the company's sick pay scheme, which normally pays employees in full for the first 4 weeks of certified sick leave in a calendar year.

Solution 3

As Joe retains all his employment rights while on carer's leave, he will be entitled to the same employment benefits he had as a full time employee. He should therefore be paid for the 2 weeks, when he was sick under the terms of the company's sick pay scheme and his carer's leave may be extended by 2 weeks at the discretion of the employer.

6.1 Compliance Notice

An Inspector of the Workplace Relations Commission can issue a Compliance Notice to an employer for breaches of certain Acts. A Compliance Notice can be issued under the **Carer's Leave Act 2001** where an employer fails to accrue annual leave during the first 13 weeks of an employee's carer's leave.⁷

See the Introduction to Employment Law chapter for further information on Compliance Notices.

⁷ Workplace Relations Act 2015, Schedule 4

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7. Income Tax, PRSI and USC Implications

An employer is not obliged to pay an employee during carer's leave unless such payment is provided for in the employee's contract of employment. If the employee is not paid, he will not be deemed to be an employed contributor for PRSI purposes for those periods. It is not common practice for an employer to pay an employee while absent on carer's leave due to the duration of carer's leave. However, if any payment is made by the employer, it should be taxed based on the latest RPN held by the employer.

Regardless of whether or not an employee is paid by his employer while on carer's leave he may be entitled to claim Carer's Benefit from the DSP assuming he meets the qualifying conditions. Carer's Benefit is a taxable source of income but it is not liable to USC or PRSI. The DSP do not transfer information about Carer's Benefit to Revenue. Individuals who receive Carer's Benefit should declare the taxable amount to Revenue in a tax return following the end of the tax year. The Carer's Support Grant is exempt from Income Tax, USC and PRSI.

When an employee is on carer's leave, he will automatically receive credited PRSI contributions from the DSP while Carer's Benefit is being claimed i.e. for the 104 weeks of carer's leave (or less if applicable). If an employee takes carer's leave and does not qualify for Carer's Benefit he can still apply for credited PRSI contributions using the following claim form which is available on the DSP website <https://www.gov.ie/en/publication/d77139-operational-guidelines-carers-benefit/>. The form should be completed by the employer on the employee's return to work and submitted to the Carer's Benefit Section of the DSP.

8. Termination of Carer's Leave

Carer's leave terminates:⁸

- On the date specified in the confirmation document, or
- On a date agreed between the employer and the employee, or
- When the employee ceases to satisfy the conditions for the provision of full-time care and attention to the relevant person, in respect of whom the leave was taken (e.g. where another person begins to provide full-time care and attention to the relevant person), or
- When the person to be cared for ceases to satisfy the conditions for a relevant person, or
- When a deciding officer, or an appeals officer of the DSP makes a decision that either the employee, or the relevant person, does not satisfy the conditions under the Act, or
- In the event of the death of the relevant person occurring during the period of carer's leave, on the earliest of the following dates:
- 6 weeks after the date of death, or
- The date specified in the confirmation document.

9. Right to Return to Work⁹

An employee is entitled to return to work on the termination of a period of carer's leave and must give at least 4 weeks' notice in writing, to his employer, of his intention, to return to his employment.

Where, it is not reasonably practical for the employer to permit the employee to return to the same work as he did prior to the leave, the employer must provide suitable alternative work, on terms

⁸ Section 11

⁹ Section 14

and conditions not less favourable to the employee than those applicable to his previous employment.¹⁰

Nothing in the Act prevents an employee resigning while on carer's leave. Where an employee informs his employer that he will not be returning to work after the expiry of a period of carer's leave, it is best practice for the employer to request a letter of resignation from the employee confirming the date he wishes to leave his employment. Under no circumstances should an employer assume that the leave date occurs before the date the employee is due to return to work, unless otherwise stated in a resignation letter.

10. Records

An employer must keep records of the carer's leave taken by an employee for a period of 8 years specifying the period of employment and the dates and times of the leave taken. An employer must also keep a copy of the confirmation document for a period of 3 years. Failure by the employer to keep such records may result, on summary conviction, in a Class B fine of up to €4,000.

11. Redress Provisions

Where a dispute arises in relation to:¹¹

- Whether the person in respect of whom the employee proposes to take carer's leave or has been granted carer's leave is not, or is no longer, a relevant person, or
- Whether the employee who proposes to take, or is on carer's leave, does not satisfy the conditions for providing full-time care and attention to the relevant person, or
- Whether the employee is engaging in employment or self-employment outside the prescribed limits

the issue must be referred to the DSP for a decision by a deciding officer. If a deciding officer decides that the carer's leave is to be terminated, a notice to this effect will be sent to both the employer and employee. On receipt of this notice an employer can terminate the period of carer's leave by giving notice to return to work on a date that is reasonable and practicable having regard to all circumstances.

If an employee is unhappy with the decision of the deciding officer, the decision may be appealed under the **Social Welfare (Consolidation) Act 2005**.

In the event of a dispute arising, in relation to an employee's entitlement to carer's leave, an unfavourable change in his conditions of employment or unfair treatment due to exercising or proposing to exercise his entitlement to carer's leave, an employee may refer his complaint to the Workplace Relations Commission for adjudication by an Adjudication Officer.¹² The complaints procedure is dealt with in the chapter entitled "Introduction to Employment Law".

Where the complaint is upheld, a determination of an Adjudication Officer shall do one or more of the following:¹³

¹⁰ Section 15

¹¹ Section 17

¹² Workplace Relations Act 2015, Section 41

¹³ Section 32 as amended by the Workplace Relations Act 2015

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- Grant carer's leave of such length and at such time as may be specified, or
- Award compensation which is deemed just and reasonable having regard for all the circumstances, but subject to a maximum of 26 weeks remuneration, or
- A combination of granting carer's leave and awarding compensation.

Pay includes allowances in the nature of pay and benefits in lieu of or in addition to pay.

An employer may also refer a dispute regarding an employee's entitlements under this Act to the WRC.

CHAPTER 49

Juries Act 1976

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Persons Ineligible for Jury Service**
 - 4. Employees as Jurors**
 - 5. Employment Protection during Jury Service**
 - 6. Length of Jury Service**
 - 7. Offences under the Juries Act 1976**
-

1. Main Provisions

The Act provides that employees and apprentices are eligible for jury service and service on a jury is treated as a period of employment rather than absence from employment. An employee is entitled to be paid by his employer while absent on jury service.

2. Covered Employees

Under the Act, every citizen aged 18 years and over, who is entered in a register of Dáil electors in a jury district, is qualified and liable to serve as a juror, unless he, or she, is ineligible for, or disqualified from jury service.¹ Thus, all employees are possible jurors, unless ineligible or disqualified. In addition, certain categories of people can be excused from jury service.

3. Persons Ineligible for Jury Service

The following are ineligible for jury service:²

- The President of Ireland.
- People involved with the administration of justice (e.g. judges, former judges, the Attorney General, the Director of Public Prosecutions, Coroners or deputy Coroners, members of An Garda Síochána, prison officers, practising barristers, solicitors (including clerks and apprentices), court officers such as registrars and personnel in Government departments involved in matters of justice or the courts).
- Members of the Defence Forces to include every member of the Permanent Defence Force and the Army Nursing Service; and any member of the Reserve Defence Force during any period which he is in receipt of pay for any service or duty as a member of the Reserve Defence Force.
- People who are incapable of serving on a jury by reason of mental illness or mental disability who are in hospital or are obliged to attend hospital on a regular basis; and those who have an enduring impairment or are unable to read so that it is not practicable for them to serve on a jury.

¹ Section 6 as amended by Civil Law (Miscellaneous Provisions) Act 2008

² Section 7

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3.1 Persons Excused from Jury Service

The following people may be excused from jury service:³

- Persons aged 65 years and upwards.
- Members of either House of the Oireachtas (Dáil Éireann and Seanad Éireann), members of the Council of State, the Comptroller and Auditor General, the Clerks of Dáil Éireann and Seanad Éireann, a person in Holy Orders, a minister of any religious denomination or community, members of monasteries and convents, aircraft pilots and ships' masters.
- Those who provide an important community service, such as practising doctors, nurses, midwives, dentists, vets, chemists, etc.
- The following persons if it is certified that their functions cannot reasonably be performed by another person or postponed: members of staff of either House of the Oireachtas, Heads of Government Departments, other civil servants, chief executive officers and employees of local authorities, Health Service Executive areas and harbour authorities, school teachers and university lecturers.
- Those who have served on a jury within the last three years or who have been excused by a judge at the conclusion of a previous period of service for a period that has not ended.
- Full-time students.
- Any person who shows to the satisfaction of the County Registrar that there is good reason why he or she should be excused.

3.2 Persons Disqualified from Jury Service⁴

People who have been sentenced to imprisonment for life or for a period of 5 years or more, or people who have at any time in the past 10 years served a prison sentence of at least 3 months are disqualified from jury service. This includes sentences served in Northern Ireland.

4. Employees as Jurors

An employee must notify his employer as soon as possible that he has been summoned for jury service. An employer is under a duty to allow an employee to attend for jury service. If this is not practicable, or convenient for the employer, the employer should write to the County Registrar, explaining the difficulty and requesting that the employee be excused.⁵

Where an employee cannot attend for jury service, an application for excusal from jury service must be made within 21 days of the date of issue of the summons, by the person summoned and should also be supported by additional documentation.

Service on a jury is treated as a period of employment, rather than absence from employment. Thus, an employee is entitled to be paid by his employer while on jury service. The Act does not provide a method of calculating rates of pay. Generally, an employee is entitled to reasonable pay (taking account of issues such as lost overtime, etc.). Reasonableness also dictates that an employee, who works night shifts, should not be required to work if he has served on a jury during the day.

If an employee is summoned for jury service and is then not required to sit on a jury and is dismissed for the day, he is no longer on jury service and should return to his place of employment until he is next required to attend for jury service. An individual may be required to report to a court for a number of days, without actually being called to serve on a jury, but he is only on jury

³ Section 9

⁴ Section 8

⁵ Section 9

service for the period of time during which he is required to be present in court, or to be available to the court.

5. Employment Protection during Jury Service

5.1 Annual Leave and Public Holiday Entitlements

Time spent on jury service counts as reckonable service for the purposes of annual leave, increments, seniority, etc., so employees do not lose any annual leave entitlement for a period of time spent on jury service. Employees also retain an entitlement to any public holidays falling during a period of jury service.

5.2 Income Tax, PRSI and USC Implications

As an employer is required to pay an employee while the employee is on jury service. The Cumulative Basis or Week 1 Basis, depending on the latest Revenue Payroll Notification (RPN) issued to the employer, continues to apply for Income tax and USC purposes. In addition, the employee will pay a PRSI contribution for each week of jury service, since he will receive payment of his normal wages/salary during this period.

6. Length of Jury Service

Jury service normally lasts for ten working days, but occasionally may last longer. If a juror envisages difficulties arising should a trial last longer than ten working days, then the juror must notify the jury office immediately in writing, stating the reasons and enclosing supporting documentation.

Employees may be excused from jury service by the court, on the morning of the court case and therefore, the employee should return to work as soon as possible on that same day. The County Registrar's office can provide a statement, with details of an employee's attendance on jury service, if required by an employer.

7. Offences under the Juries Act 1976

The County Registrar selects persons to be called for jury service and a Class E fine not exceeding €500 is applicable on summary conviction where:

- Any person, who was summoned as a juror and given at least 14 days' notice, fails to attend for jury service without reasonable excuse to attend in compliance with the summons or to attend on any day when required by the court,
- A juror, who has attended the court in compliance with a summons, but is not available when called upon to serve as a juror, or is unfit for service by reason of drink, or drugs,⁶
- Any person who makes or causes to be made on their own behalf, false representations in order to evade jury service,⁷
- Any person who makes or causes to be made, on behalf of another person summoned as a juror, any false representations, to enable him/her to evade jury service,
- Any person who serves on a jury, knowing they are ineligible,⁸
- Any person who gives false or misleading answers to the presiding Judge, regarding qualification for jury service.

⁶ Section 34 as amended by Civil Law (Miscellaneous Provisions) Act 2008

⁷ Section 35 as amended by Civil Law (Miscellaneous Provisions) Act 2008

⁸ Section 36 as amended by Civil Law (Miscellaneous Provisions) Act 2008

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A person who serves on a jury knowing that he is disqualified shall be guilty of an offence and shall be liable to a Class C fine not exceeding €2,500.⁹

⁹ Section 36(2) as amended by Civil Law (Miscellaneous Provisions) Act 2008

CHAPTER 50

Employment Equality Acts 1998 to 2021

- 1. Main Provisions**
 - 2. Covered Employees and Workplaces**
 - 3. Grounds of Equality**
 - 4. Employers' Responsibilities**
 - 5. Equality between Men and Women**
 - 6. Gender Pay Gap Reporting**
 - 7. Sexual Harassment and Harassment**
 - 8. Equality on Non-Gender Grounds**
 - 9. Redress Provisions**
 - 10. Code of Practice on Sexual Harassment and Harassment at Work**
-

1. Main Provisions

The **Employment Equality Acts 1998 to 2021** radically reformed the law on equality in the workplace. The Acts promote equality and outlaw direct and indirect discrimination on the grounds of gender, civil status, family status, sexual orientation, race, religion, disability, age and membership of the travelling community at any stage in employment, from job advertising to redundancy. The Acts also prohibit discrimination, harassment and victimisation on the grounds of racial or ethnic origin, religion or belief, disability or sexual orientation in relation to employment and occupational and vocational training.

2. Covered Employees and Workplaces

The Acts apply to all employees employed under a contract of service, full-time, part-time and temporary employees.¹ There is no minimum service requirement i.e. these rights apply from the day an employee is hired.

The Acts apply to the private and public sector, and also to employment agencies, vocational training bodies, trade unions, professional bodies and employer organisations to include the publication of advertisements and contracts of employment. The Acts also apply to self-employed people, partners in partnerships and people in domestic employment. The Acts cover direct and indirect discrimination in relation to:²

- Job advertising,
- Equal pay,
- Access to employment,
- Terms and conditions of employment,

¹ Section 2

² Section 8

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- Vocational training and work experience,
- Promotion or re-grading
- Job classification
- Dismissal, and
- Collective Agreements.

Discrimination is defined as less favourable treatment on any of the nine grounds of equality.

3. Grounds of Equality

Direct and indirect discrimination is prohibited on the following 9 grounds:³

- Gender (male, female and transgender)
- Civil status (single, married, separated, divorced, widowed, civil partners and former civil partners)
- Family status (parent or person responsible for a child under 18 years of age or the main carer for a disabled person)
- Sexual orientation (heterosexual, homosexual or bisexual)
- Race (skin colour, nationality, ethnic or national origin)
- Religion (beliefs, background, outlook, or none)
- Disability (total or partial absence of bodily or mental faculties, chronic disease, learning and personality disorders)
- Age (any age over legal school leaving age, currently 16)
- Membership of the Traveller community

4. Employers' Responsibilities

Contracts of employment and collective agreements will be void if they discriminate within the terms of the Acts. Advertising which is discriminatory within the Acts is prohibited.⁴

Employers may set a minimum age for employment which does not exceed 18 years of age. Setting a compulsory retirement age in a contract of employment is not considered as discrimination by the employer on the age ground. An employer may enforce retirement where:

- The employer has stated a mandatory retirement age in the employee's contract of employment, and
- It is objectively and reasonably justified by a legitimate aim of the employer, and
- The means of achieving that aim are appropriate and necessary.

Employers must be able to objectively justify the setting of a compulsory retirement age in the contract of employment and the setting of the age must seek to achieve a legitimate aim, such as:

- Promoting access to employment for younger people or jobseekers
- Having a balanced aged structure in the workplace to ensure a mix of experience
- Efficient planning for recruitment, promotion and retirement
- Avoiding disputes about the employee's fitness to work or the need to dismiss employees on the ground that they are no longer capable of doing the job.

³ Section 6(2)

⁴ Section 16

The fact that a normal retirement age (e.g. age 65) is specified in an occupational pension scheme, (for Revenue approval purposes the normal retirement age in a pension scheme can be between 60 and 70), is not necessarily a legitimate reason for imposing a compulsory retirement age, as pension schemes generally permit an employee to defer pension benefits beyond the normal retirement age until the date of actual retirement.

Case Law: Lett v Earagail Eisc Teoranta (DEC E2014-076)

The claimant alleged age discrimination in relation to his terms of employment and his dismissal. His working hours were reduced from 5 days to 3 days a week for 28 weeks before he was forced to retire at age 66. As the employee had not received a copy of the staff handbook, he may not have been aware of the company's retirement age of 65. The claimant refused to retire at 65 and was subsequently compulsorily retired at 66. This was sufficient to establish a case of age discrimination. The Equality Tribunal had to consider whether there was objective justification for the compulsory retirement.

The Tribunal considered the arguments put forward by the employer for having an aged balanced workforce and intergenerational fairness or sharing job opportunities among generations. However, the Tribunal noted that the complainant was not replaced and queried the necessity for the complainant to retire when the job was not given to anyone else.

The Tribunal also considered the reason of "avoiding disputes with older employees about their fitness to work". However, the employer could not provide any evidence that the employee's ability to perform the job deteriorated when once the employee attained the age of 65.

The Tribunal found that decision to retire the claimant was not objectively justified in this case. The claimant was awarded €24,000 for his discriminatory dismissal and for the reduction in his working hours. The award was in compensation for the distress experienced and was not subject to tax as it was not in the nature of pay.

Case Law: Transdev Light Rail Limited and Chrzanowski (DEC-E2016-070)

The employee alleged age discrimination when he was compulsorily retired at age 65. He wished to be retained as a tram driver on a fixed term contract for a further 2 years post retirement but this was refused by the employer. There was no express clause in his contract of employment specifying the retirement age, however his pension scheme specified 65 as the normal retirement age. The employer consistently applied the mandatory retirement age of 65 over a period of several years.

The employer argued that the retirement age of 65 was an implied term of the contract based on:

- *an established custom and practice evidenced by a consistent application over a number of years,*
- *it being stated in the company pension scheme,*
- *it being expressly stated in more recent contracts of employment, and*
- *it being included in a collective agreement entered into between the union representing the employee and the employer.*

The employer also argued that:

- *safety was a critical aspect of the job and relied on medical evidence which showed that the ability to operate a tram safely diminishes with age. This was supported by evidence from the employer which disclosed increased medical testing and screening for employees over 50 years of age.*

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- *it promoted better access to employment and allows for succession planning, which was evidenced by the fact that the employer commenced recruiting a replacement 8 months before the employee was due to retire to allow sufficient time for training the new employee.*

The Labour Court accepted the evidence of the employer and found that a mandatory retirement age of 65 for tram drivers was reasonable and proportionate and did not constitute discriminatory dismissal on the age ground.

These cases show that each case will be judged on its own merits and “objective justifications” which are acceptable in one case may not be acceptable in another case, especially where the employer cannot provide evidence to support his objective justifications.

Similarly, offering a fixed-term contract to an employee who has reached the employer’s normal retirement age does not constitute discrimination on the age ground if it is objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Again the employer would have to be able to objectively justify the termination of the employment on the expiry of the fixed term contract. The employer should not rely on the same justification for the fixed term contract as that used for the retirement age specified in the contract of employment.

The Acts also deal directly with the issue of vicarious liability - an employer will be liable for an action by an employee in the course of his employment, whether or not it was done with the employer’s knowledge or approval.⁵ However, in proceedings brought against an employer, it will be a defence for the employer to prove that he took reasonable steps to prevent such actions. Having suitably robust policies in place and applied may show that reasonable steps have been taken.

5. Equality between Men and Women

Men and women are entitled to equal pay for equal work, for the same or associated employers.⁶ Where the employees are working for associated employers, the contracts of employment do not have to be the same; however the terms must be reasonably comparable. The definition of “like work” covers work that is identical, similar and equal in value. Under the previous equal pay legislation, a case on “like work”, which was ‘equal in value’, was as follows:

Case Law: Four Female Employees v Irish Aviation Authority (1998)

Four female ‘Communication Assistants’ employed by the defendant claimed that they were entitled to equal pay as two male ‘Radio Officers’, because the work done was equal in value when compared under a number of headings. The male workers were paid nearly £9,500 more per year. The Labour Court held that the jobs were equal in value, and the four women were awarded £100,000 each in back pay.

A general equality clause in relation to gender issues is implied into contracts of employment. An employer will be allowed to operate differences between contracts of employment where the difference is based on grounds other than gender, such as experience or length of service. Indirect discrimination is also included. Indirect discrimination covers non-essential requirements for a job which a higher percentage of one sex can comply with (e.g. an age limit may discriminate

⁵ Section 15

⁶ Part III

against women who have taken time off work to raise children). Positive action to eliminate the effects of past discrimination against women is allowed.

5.1 Exceptions

There are exceptions where discrimination is provided for in certain cases including:⁷

- Grounds of authenticity for entertainment (e.g. a male model)
- The performance of duties outside the State where laws or customs could not reasonably allow for a person of another sex to do the duties (e.g. a male engineer required for Saudi Arabia)
- Duties involving personal services (e.g. a personal nurse)
- Sleeping or sanitary facilities for employees are on a communal basis and it is unreasonable to expect the employer to provide separate sleeping facilities
- Exception is made for benefits conferred on women in relation to pregnancy, maternity and adoption
- Exceptions are also made in certain circumstances for the Gardaí, Navy and prison service

Case Law: A Mechanic v A Transport Provider (ADJ-00006020)

This case concerns a complaint by an employee against an employer concerning an allegation of discrimination against the employee on the grounds of gender in respect of his entitlement to paternity leave.

The employee took 2 weeks paternity leave beginning on 19th September 2016 and received 2 weeks Paternity Benefit from the DSP. The employer does not operate a paternity pay policy, and furthermore requires that employees availing of such leave pay their own and the employer's contribution to the occupational pension scheme. The employee suffered a loss of €1,204.20.

The employer provides a contractual maternity pay scheme where eligible female employees receive a top up (full pay less maternity benefit) for a period of 26 weeks. Additional maternity leave (16 weeks) is treated in the same manner as the paternity leave, as a period of absence and the employee is obliged to pay both an employee and employer pension contribution.

The employee argued that the different treatment constitutes either indirect sex discrimination or a breach of his entitlement to equal treatment. The Act provides that discrimination occurs, unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Section 22(1)(a) and (1)(b) relates to matters other than pay and Section 19(4)(a) and (4)(b) relates to equal pay. The employee contends that the treatment is not objectively justified and moreover that the pay discrimination which excludes the male sex from an opportunity to assist in the provision of childcare and support to the mother is both disproportionate and unnecessary. The employee alluded to the negative and harmful social effects which should be considered in any consideration of 'objective justification' and pointed out that only 23% of males avail of the Paternity Benefit.

The employer argued that:

- *It had fulfilled its statutory obligation under both the Maternity Leave Acts 1994 and 2004 and the Paternity Leave and Benefit Act 2016.*

⁷ Section 25 as amended by Section 16 of Equality Act 2004

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- *Section 26(1) of the Employment Equality Acts provides that it is not unlawful for an employer to arrange for or provide treatment which confers benefits to women in connection with pregnancy and maternity (including breast feeding) or adoption.*
- *The payment of maternity pay during maternity leave was clearly in connection with pregnancy and maternity, and hence did not constitute discrimination.*
- *The Equal Opportunities Recast Directive (2006/54/EC) clearly distinguishes between maternity and paternity leave and does not provide for payment or pension contributions for an employee on paternity leave regardless of whether such payments are made to an employee on maternity leave.*

The Adjudication officer found that paying female employees during maternity leave in contrast to not paying male employees during paternity leave did not constitute discrimination, as this falls within the exception in Section 26(1) of the Employment Equality Act as outlined above. Accordingly, the employee's complaint failed.

6. Gender Pay Gap Reporting

The **Gender Pay Gap Information Act 2021** amends the **Employment Equality Act 1998** to require certain employers to report and publish information relating to the pay of their employees by reference to their gender to determine if any pay difference (gender pay gap) exists. The gender pay gap refers to the difference between the average pay of men and women regardless of their level of seniority within the organisation. If a pay gap exists, employers must identify the size of the pay gap, the reasons for the pay gap and the actions to be taken by the employer to eliminate or reduce any pay gap. The Gender Pay Gap Reporting will be dealt with in more detail in the chapter entitled **Gender Pay Gap Information Act 2021**.

7. Sexual Harassment and Harassment

Sexual harassment is specifically provided for in the **Employment Equality Acts 1998 to 2021**.⁸ Sexual harassment constitutes discrimination on gender grounds, which includes any act of physical intimacy, a request for sexual favours, spoken words, gestures or the production, display or circulation of written words, pictures or other material. The actions must be unwelcome and regarded as offensive, humiliating or intimidating. Sexual harassment constitutes discrimination if the victim is treated differently because of rejection of such actions.

An employer may be liable where the employee is sexually harassed by the employer, another employee or a client or customer of the employer. The Acts impose an objective test of what a reasonable person would find offensive, rather than a subjective test of what the actual employee found offensive. The definition of sexual harassment includes same sex harassment.

8. Equality on Non-Gender Grounds

In relation to the other eight grounds of equality, the Acts provide for an entitlement to equal treatment and pay. It prohibits direct and indirect discrimination on such grounds. It also provides that harassment of an employee on any one ground will constitute discrimination by the employer.

An employer may not discriminate against a person on the disability ground where the person requires special facilities if the cost of providing the facilities will not give rise to undue hardship.

⁸ Section 14A as inserted by Section 8 of Equality Act 2004

It is lawful to impose requirements in relation to residence, citizenship, proficiency in Irish on Gardaí, members of the Defence Forces, civil servants, officers of local authorities and teachers.⁹

There is a specific exclusion of discrimination by religious, educational or medical institutions where the institution is controlled by a religious body and the discrimination is essential for the ethos of the institution.¹⁰

9. Redress Provisions

An employee who claims:

- a) To have been discriminated against or subjected to victimisation,
- b) To have been dismissed in circumstances amounting to discrimination or victimisation,
- c) Not to be receiving remuneration in accordance with an equal remuneration term, or
- d) Not to be receiving a benefit under an equality clause,

may refer a dispute to the Workplace Relations Commission (WRC) for adjudication by an Adjudication Officer. The complaint must be made within 6 months from the date that the discrimination or victimisation took place. For the purpose of this 6 month time limit, discrimination or victimisation is deemed to occur:

- At the end of the period, where it occurs over a period of time,
- Throughout the duration of an employment, where it arises by virtue of a term in the contract of employment, or
- When a specific act or omission occurs.

Where the complaint is upheld, a determination of an Adjudication Officer may include one or more of the following:

- a) Where the complaint relates to an employer's failure to provide equal pay, order the employer to provide equal pay including arrears for up to a maximum of 3 years,
- b) Order the employer to pay compensation for the effects of discrimination or victimisation,
- c) Order equal treatment in whatever respect is relevant to the case,
- d) Order a person to take a specified course of action,
- e) Order that the employee be reinstated or reengaged, with or without compensation.

Compensation payable under points (b) and (e) above is subject to a maximum of:

- 104 week's pay (or the amount that would have been payable but for the discrimination) where the employee was in receipt of pay at the date of making a claim or the date of his dismissal, as appropriate, or €40,000, whichever is greater, or
- €13,000 in any other case (e.g. discrimination against a potential employee in a job advertisement or interview).

Pay includes monetary payments and the value of benefits in kind, but excludes any pension entitlements.

Gender claims are the only discrimination claims which can be taken to the Circuit Court (as an alternative to the WRC). If the issue relates to equal pay, the Circuit Court can award arrears of

⁹ Section 36

¹⁰ Section 37 as amended by section 25 of the Equality Act 2004

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pay for up to 6 years and there is no limit to the amount of compensation that may be ordered by the Circuit Court.

Where an employee has been dismissed in circumstances constituting discrimination, they can only take a case under this Act, or the **Unfair Dismissal Acts 1977 to 2015**, not both.

Further information relating to the Complaints procedures can be found in the chapter entitled “Introduction to Employment Law”.

10. Code of Practice on Sexual Harassment and Harassment at Work

A **Code of Practice on Sexual Harassment and Harassment at Work**, a copy of which is produced at the end of this chapter has the same status as law and was issued in an attempt to address issues which were not clearly or adequately dealt with in the **Employment Equality Acts 1998 to 2021**.

While the Code of Practice was prepared by the Equality Authority, this organisation was dissolved in 2014 and its functions were transferred to the Irish Human Rights and Equality Commission.

Code of Practice on Sexual Harassment and Harassment at Work

This code has been given legal effect in the Statutory Instrument entitled Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012 (S.I. No. 208 of 2012)

I, ALAN SHATTER, Minister for Justice and Equality, in exercise of the powers conferred on me by sections 56 (3)(a) and 56 (5) of the Employment Equality Act 1998 (No. 21 of 1998) (as adapted by the Justice and Law Reform (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 138 of 2011)), hereby order as follows:

1. This Order may be cited as the Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012.
2. The code of practice, which was prepared by the Authority and submitted to me, the text of which is set out in the Schedule to this Order, is declared to be an approved code of practice for the purposes of the Employment Equality Act 1998 (No. 21 of 1998).
3. The code of practice, declared to be an approved code of practice in Article 2 of the Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2002 (S.I. No. 78 of 2002), the text of which is set out in the Schedule to that Order, is revoked.
4. The Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2002 is revoked.

SCHEDULE

The functions of the Equality Authority under the Employment Equality Act 1998 and the Equal Status Act 2000 include:

- Working towards the elimination of discrimination in employment and in relation to matters to which the Equal Status Act applies — The promotion of equality of opportunity
- The provision of information on the working of both Acts
- Keeping under review the working of the Employment Equality Act and the Equal Status Act and whenever necessary to make proposals to the Minister for Justice and Equality for the amendment of those Acts.

Certain provisions in the Employment Equality Act 1998 and the Equal Status Act 2000 were amended by the Equality Act 2004

References in this code to the Employment Equality Act mean to the Employment Equality Acts 1998 to 2011. References to the Equal Status Act mean to the Equal Status Acts 2000 to 2011.

Within these functions the Equality Authority may prepare codes of practice in furtherance of the elimination of discrimination and the promotion of equality of opportunity. Section 56(4) of the Employment Equality Act as amended by paragraph (g) of the Schedule to the Equal Status Act provides that:

‘An approved code of practice shall be admissible in evidence and, if any provision of the code appears to be relevant to any question arising in any criminal or other proceedings, it shall be taken into account in determining that question; and for this purpose “proceedings” includes, in addition to proceedings before a court and under Part VII or under Part III of the Equal Status

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Act 2000, proceedings before the Labour Court, the Labour Relations Commission, the Employment Appeals Tribunal, the Equality Tribunal and a rights commissioner'.

What follows is a code of practice within the meaning of section 56(1) and (4) of the Employment Equality Act as amended by paragraph (g) of the Equal Status Act.

(1) FOREWORD

The impact of sexual harassment and harassment

Sexual harassment, and harassment on the eight other non-gender discriminatory grounds, pollute the working environment and can have a devastating effect on the health, confidence, morale and performance of those affected by it. The anxiety and stress produced by sexual harassment and harassment may lead to those subjected to it taking time off work due to sickness and stress, being less efficient at work or leaving their job to seek work elsewhere. Employees often suffer the adverse consequences of the harassment itself and, in addition, the short and long term damage to their employment prospects if they are forced to forego promotion or to change jobs. Sexual harassment and harassment may also have a damaging impact on employees not themselves the object of unwanted behaviour but who are witness to it or have a knowledge of the unwanted behaviour.

There are also adverse consequences arising from sexual harassment and harassment for employers. It has a direct impact on the profitability of the enterprise where staff take sick leave or resign their posts because of sexual harassment or harassment. It can also have an impact on the economic efficiency of the enterprise where employees' productivity is reduced by having to work in a climate in which the individual's integrity is not respected.

Some specific groups are particularly vulnerable to sexual harassment and harassment as there may be a link between the risk of sexual harassment or harassment and an employee's perceived vulnerability — such as might be the case with new entrants to the labour market, those with irregular or precarious employment contracts and employees in non-traditional jobs.

PART 2: Introduction

This code has been prepared by the Equality Authority with the approval of the Minister for Justice and Equality and after consultation with IBEC, ICTU and other relevant organisations representing equality interests.

Aim

This code aims to give practical guidance to employers, employers' organisations, trade unions and employees on:

- What is meant by sexual harassment and harassment in the workplace
- How it may be prevented
- What steps to take if it does occur to ensure that adequate procedures are readily available to deal with the problem and to prevent its recurrence.

Status

The code thus seeks to promote the development and implementation of policies and procedures which establish working environments free of sexual harassment and harassment and in which the dignity of everyone is respected.

The provisions of this code are admissible in evidence and if relevant may be taken into account in any criminal or other proceedings before a court and under Part VII of the Employment Equality Act, and also in proceedings before the Labour Court, the Labour Relations Commission, the Employment Appeals Tribunal, the Equality Tribunal and a rights commissioner.

This code does not impose any legal obligations in itself, nor is it an authoritative statement of the law — that can only be provided by the Equality Tribunal, the Labour Court and the courts. It is the employer's responsibility to ensure compliance with the Employment Equality Acts and European equality law.

Application and adaptation of the code

The code is intended to be applicable to all employments, employment agencies and trade unions, employer bodies and professional bodies that are covered by the Employment Equality Act. Employers are encouraged to follow the recommendations in a way which is appropriate to the size and structure of their organisation. It may be relevant for small and medium sized enterprises to adapt some of the practical steps to their specific needs. Any adaptations that are made however, should be fully consistent with the code's general intention.

An employer is legally responsible for the sexual harassment and harassment suffered by employees in the course of their work unless he/she took reasonably practicable steps to prevent sexual harassment and harassment from occurring, to reverse the effects of it and to prevent its recurrence. Employers who take the steps set out in the code to prevent sexual harassment or harassment, to reverse the effects of it and to prevent its recurrence, may avoid liability for such acts in any legal proceedings brought against them.

It is essential that employers have in place accessible and effective policies and procedures to deal with sexual harassment and harassment. These measures should be agreed by the employers with the relevant trade union or employee representatives. In so far as practicable, clients, customers and business contacts should also be consulted.

Equality of opportunity

A policy on sexual harassment and harassment at work is an integral part of equal opportunities strategies in the workplace. Such policies will be more effective when operated in conjunction with similar policies on equal opportunities and health and safety.

PART 3: Employment Equality Act 1998

The Employment Equality Act prohibits discrimination on nine specific grounds in all aspects of a person's employment, including:

- Access to employment
- Conditions of employment
- Training or experience
- Promotion or regrading
- Classification of posts
- Vocational training
- Equal pay
- (It may also apply in certain circumstances when the relationship has ended, for example to references).

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The Act applies to employers, employment agencies, trade unions, employer bodies and professional and trade organisations.

Discriminatory Grounds

An employer must not treat an employee less favourably because of their:

Gender — man, woman, (this also includes transgender).

Civil Status — single, married, separated, divorced, widowed, in a civil partnership within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabits Act 2010 or being a former civil partner in a civil partnership that has ended by death or been dissolved.

Family Status — responsibility as a parent or as a person in loco parentis in relation to a person under 18, or as a parent or the resident primary carer of a person over 18 with a disability which is of such a nature as to give rise to the need for care or support on a continuing, regular or frequent basis.

Sexual Orientation — heterosexual, bisexual or homosexual.

Disability — this is very broadly defined in section 2(1) of the Employment Equality Act and includes most disabilities.

“Disability” means—

- (a) the total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body,
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- (c) the malfunction, malformation or disfigurement of a part of a person’s body,
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) a condition, disease or illness which affects a person’s thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour, and includes a disability which exists at present, or which previously existed but no longer exists, or which may exist in the future or which is imputed to a person.

Age — the protection against age-related discrimination (including harassment) in employment applies only to employees over the maximum age at which a person is statutorily obliged to attend school. The minimum school leaving age is currently 16 years, or the completion of three years of post-primary education, whichever is the later.

Race — race, colour, nationality or ethnic or national origins.

Religious Belief — includes different religious background or outlook, (including absence of religious belief).

Membership of the Traveller Community — “Traveller community” means the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.

Reasonable accommodation S16 EE Act

Employers have obligations to reasonably accommodate employees with disabilities (unless such measures would impose a disproportionate burden). This obligation should be taken account of in the format and content of any policies or procedures on sexual harassment and harassment, and in their implementation.

Victimisation S74 (2) EE Act

The Employment Equality Act protects employees who, for example, seek redress under the Act, support a complainant, or give evidence in proceedings, by prohibiting their being victimised by dismissal or other penalty for doing so.

Harassment and sexual harassment

The Employment Equality Act protects employees from employment-related sexual harassment and harassment. It distinguishes between sexual harassment (sexual or gender-based) and harassment based on one or more of the other grounds.

Harassment, sexual harassment and discrimination S14A (1) EE Act

Harassment that is based on the following grounds — civil status, family status, sexual orientation, religion, age, disability, race, or the Traveller community ground — is a form of discrimination in relation to conditions of employment.

Sexual harassment is a form of discrimination on the gender ground in relation to conditions of employment.

What is sexual harassment? S14A (7) EE Act

Harassment is defined in section 14A(7) of the Employment Equality Act as any form of unwanted conduct related to any of the discriminatory grounds which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. Bullying that is not linked to one of the discriminatory grounds is not covered by the Employment Equality Act.

The protection of the Act extends to situations where the employee does not have the relevant characteristic related to the discriminatory ground but the perpetrator believes that he/she has that characteristic, for example, if the perpetrator believes the employee is gay and the employee is not.

Many forms of behaviour, including spoken words, gestures or the display/circulation of words, pictures or other material, may constitute harassment. A single incident may constitute harassment. The following list of examples is illustrative rather than exhaustive:

- Verbal harassment – jokes, comments, ridicule or songs
- Written harassment – including faxes, text messages, emails or notices
- Physical harassment – jostling, shoving or any form of assault
- Intimidatory harassment – gestures, posturing or threatening poses
- Visual displays such as posters, emblems or badges
- Excessive monitoring of work
- Isolation or exclusion from social activities
- Unreasonably changing a person's job content or targets

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- Pressure to behave in a manner that the employee thinks is inappropriate, for example being required to dress in a manner unsuited to a person's ethnic or religious background.

What is sexual harassment - S14A(7) Employment Equality Act.

Sexual harassment is defined in section 14A(7) of the Employment Equality Act as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

Many forms of behaviour can constitute sexual harassment. It includes examples like those contained in the following list although it must be emphasised that the list is illustrative rather than exhaustive. A single incident may constitute sexual harassment.

Physical conduct of a sexual nature — This may include unwanted physical contact such as unnecessary touching, patting or pinching or brushing against another employee's body, assault and coercive sexual intercourse.

Verbal conduct of a sexual nature — This includes unwelcome sexual advances, propositions or pressure for sexual activity, continued suggestions for social activity outside the work place after it has been made clear that such suggestions are unwelcome, unwanted or offensive flirtations, suggestive remarks, innuendos or lewd comments.

Non-verbal conduct of a sexual nature — This may include the display of pornographic or sexually suggestive pictures, objects, written materials, emails, text-messages or faxes. It may also include leering, whistling or making sexually suggestive gestures.

Gender-based conduct — This includes conduct that denigrates or ridicules or is intimidatory or physically abusive of an employee because of his or her sex such as derogatory or degrading abuse or insults which are gender-related.

Unwelcome conduct

The Employment Equality Act does not prohibit all relations of a sexual or social nature at work. To constitute sexual harassment or harassment the behaviour complained of must firstly be unwelcome. It is up to each employee to decide (a) what behaviour is unwelcome, irrespective of the attitude of others to the matter and (b) from whom, if anybody, such behaviour is welcome or unwelcome, irrespective of the attitudes of others to the matter. The fact that an individual has previously agreed to the behaviour does not stop him/her from deciding that it has become unwelcome. It is the unwanted nature of the conduct which distinguishes sexual harassment and harassment from behaviour which is welcome and mutual.

Violation of dignity

In addition, to constitute sexual harassment or harassment under the Employment Equality Act the behaviour must have the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Intention

The intention of the perpetrator of the sexual harassment or harassment is irrelevant. The fact that the perpetrator has no intention of sexually harassing or harassing the employee is no defence. The effect of the behaviour on the employee is what is relevant.

Sexual harassment and harassment by employers, employees and non-employees: S14A(1) and S14A(4) of the Employment Equality Act

The Employment Equality Act protects employees from sexual harassment and harassment by:

- the employer
- fellow employees
- clients
- customers
- other business contacts including any person with whom the employer might reasonably expect the employee to come into contact in the workplace. This may include those who supply or deliver goods/services to the employer, maintenance and other types of professional contractors, as well as volunteers.

Non-workplace sexual harassment and harassment: S14A(1) Employment Equality Act

The scope of the sexual harassment and harassment provisions extend beyond the workplace, for example to conferences and training that occur outside the workplace. It may also extend to work-related social events.

Different treatment because of acceptance or rejection of sexual harassment or harassment: S14A(1) and S14A(3) of the Employment Equality Act

The protection of the legislation extends to circumstances in which, because he/she has rejected or accepted sexual harassment or harassment, an employee is treated differently in the workplace, for example in relation to decisions concerning access to training, promotion or salary.

Employment Agencies and Vocational Training: S14A(5) Employment Equality Act

The provisions on sexual harassment and harassment also apply to employment agencies and vocational training.

Obligations on Employers: S14A(2) Employment Equality Act

The Employment Equality Act requires employers to act in a preventative and remedial way.

Defence of reasonably practicable steps: S14A(2) Employment Equality Act

Employers are legally responsible for the sexual harassment and harassment of employees carried out by co-employees, clients, customers or other business contacts of the employer. It is a defence for the employer to prove that he/she took reasonably practicable steps to prevent:

- the employee from being harassed
- the employee from being treated differently in the workplace or in the course of employment and, if and so far as any such treatment has occurred, to reverse the effects of it.

In order to rely on this defence, employers must show that they have comprehensive, accessible, effective policies that focus on prevention, best practice and remedial action, and also accessible effective complaints procedures. The measures taken to put the policies and procedures into practice will also be taken into account by courts and tribunals: employers will not be able to rely on an excellent policy if it has not been effectively implemented. The core elements of a policy and complaints procedure are outlined in Parts (4) and (5) of this code.

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Time limits and Remedies under S74-93 Employment Equality Act

A complaint of sexual harassment or harassment, including complaints relating to dismissal in circumstances amounting to discrimination or victimisation, may be made to the Director of the Equality Tribunal who may refer the complaint to an Equality Officer or, with the parties' agreement, for mediation.

In sexual harassment complaints (and all gender-based complaints) the employee may bypass the Tribunal and refer the matter to the Circuit Court.

A complaint must be made within 6 months of the alleged occurrence of sexual harassment or harassment or of the most recent occurrence of such harassment. The time limit of six months may be extended up to a maximum period of 12 months where reasonable cause is shown.

The maximum that can be awarded by the Equality Tribunal, and the Labour Court on appeal, is 104 weeks' pay or €40,000, whichever is the greater. However, section 82(3) provides that no enactment relating to the jurisdiction of the Circuit Court shall be taken to limit the amount of compensation which may be awarded by the Circuit Court.

The Equality Tribunal, Labour Court or the Circuit Court may order re-instatement or re-engagement.

S98 Employment Equality Act

To dismiss an employee for making a complaint of sexual harassment or harassment under the Employment Equality Act in good faith is an offence: an employer on conviction may be ordered to pay a fine and compensation, or the court may order re-instatement or re-engagement.

Right to seek information: S76 and S81 Employment Equality Act

Prior to making a complaint under the Employment Equality Act an employee is entitled to seek "material information" from an employer about alleged acts of sexual harassment or harassment, the employer's failure to deal with them or about relevant procedures. There is no obligation on the employer to provide the information, but the Circuit Court, the Equality Tribunal or the Labour Court, in subsequent proceedings, may draw such inferences as seem appropriate from the failure to supply the information.

PART 4: The Policy

Prevention is the best way to minimise sexual harassment and harassment in the workplace. An effective policy, and a strong commitment to implementing it, is required. The purpose of an effective policy is not simply to prevent unlawful behaviour but to encourage best practice and a safe and harmonious workplace where such behaviour is unlikely to occur. This policy is likely to be more effective when it is linked to a broader policy of promoting equality of opportunity. Employers should adopt, implement and monitor a comprehensive, effective and accessible policy on sexual harassment and harassment.

Preparing the Policy

Strategies to create and maintain a working environment in which the dignity of employees is respected are most likely to be effective when they are jointly agreed. In this way, employers and other parties to the employment relationship can create an anti-harassment culture and share a sense of responsibility for that culture.

The policy and complaints procedure should be adopted, where appropriate, in so far as is practicable with clients, customers and other business contacts after consultation or negotiation with trade union or employee representatives, where possible, over its content and implementation. Simple direct language should be used in the policy. It should be accessible to those with literacy problems and those who may not speak fluent English.

Core Elements and Implementation Steps

(1) The policy should begin by declaring:

- a) the organisation's commitment to ensuring that the workplace is free from sexual harassment and harassment
- b) that all employees have the right to be treated with dignity and respect
- c) that complaints by employees will be treated with fairness and sensitivity and in as confidential a manner as possible
- d) that sexual harassment and harassment by employers, employees and non-employees such as clients, customers and business contacts will not be tolerated and could lead to disciplinary action (in the case of employees) and other sanctions, for example the suspension of contracts or services, or exclusions from premises (in the case of non-employees).

(2) Definitions and Scope

- a) the policy should set out definitions of sexual harassment and harassment which are simple, clear and practical
- b) a non-exhaustive list of examples should be provided
- c) the policy should state that the protection extends to:
 - sexual harassment and harassment by co-workers, clients, customers and other business contacts
 - beyond the workplace to conferences and training and may extend to work-related social events
 - different treatment of an employee because he/she has rejected or accepted the sexual harassment or harassment
 - employment agencies and vocational training
- d) the policy should emphasise that it is up to the employee to decide what behaviour is unwelcome irrespective of the attitude of others to the matter
- e) the policy should state that employees who, for example, make a complaint, support a complainant, or who give evidence in proceedings, will not be victimised.

(3) Allocation of responsibilities under the Act

The policy should state that management and others in positions of authority have a particular responsibility to ensure that sexual harassment and harassment does not occur and that complaints are addressed speedily. The policy should state that in particular management will:

- provide good example by treating all in the workplace with courtesy and respect
- promote awareness of the organisation's policy and complaints procedures
- be vigilant for signs of harassment and take action before a problem escalates
- respond sensitively to an employee who makes a complaint of harassment
- explain the procedures to be followed if a complaint of sexual harassment or harassment is made
- ensure that an alleged perpetrator is treated fairly
- ensure that an employee making a complaint is not victimised for doing so

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- monitor and follow up the situation after a complaint is made so that sexual harassment or harassment does not recur.

(4) Trade Unions

The policy should address the contribution to be made by the trade union/s. Trade unions can play a role in the prevention of sexual harassment and harassment in the workplace through their participation in the development and implementation of policies and procedures, through their information and training services, and through the collective bargaining process. Trade unions may also play a role in providing information, advice and representation to employees who have been sexually harassed or harassed, and to employees against whom allegations of sexual harassment and harassment have been made.

(5) Employees

The policy should make it clear that employees may contribute to achieving a harassment-free environment through co-operating with management and trade union strategies to eliminate sexual harassment and harassment, and that sexual harassment and harassment by employees constitutes misconduct and may lead to disciplinary action. The policy should also emphasise that employees must conduct themselves so as to respect the rights of others to dignity in the workplace.

(6) Non-Employees

The policy should point out that sexual harassment and harassment by non-employees such as clients, customers and business contacts will not be tolerated and may lead, for example, to termination of contracts, suspension of services, exclusion from a premises or the imposition of other sanctions (as appropriate).

(7) Communication of Policy

The policy should include a commitment to effective communication. It should be communicated effectively to all those potentially affected by it including management, employees, customers, clients and other business contacts, including those who supply and receive goods and services. Effective means of communicating a policy could include, for example, newsletters, training manuals, training courses, leaflets, websites, emails and notice boards.

To Employees

Employees, including those in management and all other positions of responsibility, should be made aware of the policy as part of any formal induction process whereby new employees become familiar with their job and their working environment and rules and regulations that apply such as health and safety.

Employers should consider a staff handbook where practicable to be distributed to all employees as part of the induction process. This handbook will need to be updated regularly to reflect relevant changes.

To Non-Employees

There may be some practical difficulties in ensuring that the policy is effectively communicated to every relevant person particularly where there is no ongoing relationship. Summaries of policies should be prominently displayed. This may not be feasible for retail outlets or pubs: these should prominently display a short statement confirming the policy's existence and the organisation's commitment to it, making it clear that the complete policy is available.

The effective communication of the policy should be easier where there is an on-going relationship with clients and customers. This can be achieved by way of a combination of measures such as:

- leaflets summarising the policy being prominently displayed where members of the public, clients, and customers attend such as receptions and waiting rooms
- including a leaflet or short written statement summarising the policy in any of the company written material such as appropriate brochures etc.
- it may be appropriate for the contracts of the employer with clients, customers and other business contacts to provide that sexual harassment or harassment of employees of the employer will constitute a repudiation of the contract and may be a ground for the employer to treat the contract as at an end.

(8) Monitoring

The policy should include a commitment to monitoring incidents of sexual harassment and harassment.

The only way an organisation can know whether its policy and procedures are working is to keep careful track of all complaints of sexual harassment and harassment and how they are resolved. This monitoring information should be used to evaluate the policy and procedures at regular intervals, with changes recommended where appropriate.

(9) Training

The policy should include commitments to training staff on issues of sexual harassment and harassment. An important means of ensuring that sexual harassment or harassment does not occur is through the provision of training for managers, supervisors and all staff. This should happen for staff at induction or through appropriate awareness-raising initiatives. Such training should aim to identify the factors which contribute to a working environment free of sexual harassment and harassment and to familiarise participants with their responsibilities under the employer's policy and problems they are likely to encounter. This is considered especially important for those members of staff responsible for implementing the policy and processing complaints.

(10) Complaints Procedure

The policy should set out a complaints procedure.

It is essential for employers to attach to their policy a detailed complaints procedure that will be available to employees. Clients, customers and others who interact regularly with the organisation should be made aware of the employees' right to make a complaint and that they may be requested to participate in the process.

(11) Reviews

The policy should include a commitment to review on a regular basis in line with changes in the law, relevant case law or other developments. A competent person should be designated to ensure that monitoring, training and reviews occur.

PART 5: The Complaints Procedure

The development of clear and precise procedures to deal with sexual harassment and harassment once it has occurred is of great importance. The procedure should ensure the resolution of problems in an effective and timely manner. Practical guidance for employees on how to deal

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with sexual harassment and harassment will make it more likely that these problems will be dealt with at an early stage.

The following are core elements which are relevant to any complaints procedure. They will need to be adapted and expanded upon to reflect the size and complexity of the employment.

Core Elements

(1) Plain language

The procedures should be set out clearly, step by step, in plain language and, where appropriate, in relevant languages and formats so that a person making a complaint knows what to do and who to approach.

(2) Time limits

Time limits should be set for every stage of the investigation.

(3) Statutory rights

The procedure should make it clear that using the complaints procedure will not affect the complainant's right to make a complaint under the Employment Equality Act and should point out the statutory time limits.

(4) Victimisation

The complaints procedure should make clear that an employee will not be victimised or subject to sanction, for example, for making a complaint in good faith, supporting a complainant, giving evidence in proceedings, or by giving notice of an intention to do any of the foregoing.

The procedure should make clear that in the course of investigating the complaint the employer will make no assumptions about the culpability of the alleged perpetrator.

(5) Sanctions

Employees should be informed that, in the event of the complaint being upheld, the disciplinary process will be invoked which may lead to disciplinary sanctions up to and including dismissal. Non-employees should be informed that, in the event of the complaint being upheld, appropriate sanctions may be imposed which could in particular circumstances include termination of contract, suspension of service, exclusion from premises etc. as appropriate.

(6) Confidentiality

The procedure should make clear that confidentiality will be maintained throughout any investigation to the greatest extent consistent with the requirements of a fair investigation.

Resolving the problem informally

Most of those who experience sexual harassment or harassment simply want the harassment to stop. The complaints procedure should provide for both informal and formal methods of resolving problems.

The procedure should provide for a competent named person to be available to assist in the resolution of any problems through informal means and to provide information to both employees and non-employees on the procedure and on the policy in general.

The employee who is being sexually harassed or harassed should object to the conduct where this is practicable. The complaints procedure should provide that employees should attempt to resolve the problem informally in the first instance. In some cases it may be possible and sufficient for the employee to explain clearly to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work.

In circumstances where it is too difficult for an individual to do this on his/her own, an alternative approach would be to seek support from, or for an initial approach to be made by, a sympathetic friend, designated person or trade union representative. The informal process could provide for mediation.

Formal complaints procedure

The complaints procedure should also provide for a formal complaints procedure where:

- The employee making the complaint wishes it to be treated formally or
- The alleged sexual harassment or harassment is too serious to be treated under the informal procedure or
- Informal attempts at resolution have been unsatisfactory or
- The sexual harassment or harassment continues after the informal procedure has been followed.

Investigation of the complaint

The procedure should provide that investigation of any complaint will be handled with fairness, sensitivity and with due respect for the rights of both the complainant and the alleged perpetrator. The investigation should be, and be perceived as, independent and objective: to this end it is essential that the principles of natural justice be adhered to.

Those carrying out the investigation should not be connected with the allegation in any way. It is preferable that at least two people should investigate a complaint but it is acknowledged that this may not always be practicable. Such an investigation team should have gender balance and ideally should seek to ensure diversity across the other eight grounds. All of those on the investigation team should have received appropriate training. Every effort should be made to resolve the complaint speedily. External assistance may be necessary to deal with complaints in some circumstances so as to ensure impartiality, objectivity and fairness in an investigation.

To ensure procedural fairness both the complainant and alleged perpetrator should be informed of the following:

- what the formal procedure entails and the relevant time frame
- that both parties have the right to be accompanied and/or represented, by a representative, trade union representative, a friend or colleague
- that the complaint should be in writing and that the alleged perpetrator will be given full details in writing of the nature of the complaint including written statements and any other documentation or evidence including witness statements, interview notes or records of meetings held with the witnesses
- that the alleged perpetrator will be given time to consider the documentation and an opportunity to respond
- that confidentiality will be maintained throughout any investigation to the greatest extent consistent with the requirements of a fair investigation

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- that a written record will be kept of all meetings and investigations — that the investigation, having considered all of the evidence before it and the representations made to it, will produce a written report to both parties outlining its findings and the reasons for its final decision
- if the complaint is upheld against an employee the report will recommend whether the organisation's disciplinary procedure should be invoked
- if the complaint is upheld against a non-employee the report should recommend appropriate sanctions against the non-employee or his/her employer which could extend where appropriate to:
 - exclusion of the individual from premises
 - suspension or termination of service
 - suspension or termination of a supply service or other contract
- the report may also, or as an alternative, recommend other actions such as training, or more effective promotion of the organisation's policy on sexual harassment and harassment
- if a right of appeal exists both parties should be informed of it and the time limits and procedures involved

Both parties to a complaint should receive support (for example, counselling or other intervention as appropriate) and regular review following the investigation as the process is likely to result in tension and disharmony between the parties, co-employees, teams, etc. at least in the short-term.

It is the responsibility of the employer to provide for proper notifications regarding the investigation process and for a fair determination of the complaint. What is required in any particular instance will depend on the circumstances and/or complexity of the case and may require the adaptation of the procedures.

Non-Employees

It is possible that if the person accused of sexual harassment or harassment is not an employee, he/she will not wish to participate in the formal procedure, and it will not be possible to secure their participation. Nonetheless a non-employee must be kept informed of all developments and given an opportunity to respond to them. The outcome of the investigation and any potential sanctions must also be explained to the non-employee and/or any person or company for whom he/she works.

PART 6: Reasonable Accommodation

The content, form and implementation of the policy and procedures should be accessible to all with adjustments made and steps taken to ensure accessibility in particular for people with disabilities. Examples would include the translation of policies and procedures into Braille or large print formats or the availability of signers.

PART 7: Accessibility

Certain measures may be necessary to ensure the accessibility of policies and procedures, for example, the translation of policies and procedures into languages other than English as appropriate or the provision of interpreters.

PART 8: Review of this Code

The Employment Equality Act has been in operation since October 1999. As case law and other developments occur in the area of sexual harassment and harassment, it will be necessary to further review and amend this code to reflect these changes.

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APPENDIX 1 - EU DEVELOPMENTS

European Commission Recommendation

The European Commission's code of practice annexed to its Recommendation of 27th November, 1991 on the protection of the dignity of women and men at work (92/131/EEC) provides the following definition:

"Sexual harassment means unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work".

Future Development

It is likely that there will be a new Gender Employment Directive which will contain a definition of sexual harassment.

Framework Directive and "Race" Directive definitions

Council Directive 2000/78/EC of 27th November, 2000 establishing a general framework for equal treatment in employment and occupation and Council Directive 2000/43/EC of 29th June, 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, contain definitions of harassment referable to religion or belief, disability, age or sexual orientation (Framework Directive) and racial or ethnic origin ("Race" Directive).

These Directives define harassment as follows:

"When unwanted conduct" (related to membership of a particular group) (.....) takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment".

Both Directives have to be implemented in Ireland by 2003 (Race Directive - 19 July, 2003; Employment Directive - 2 December, 2003 - however, in order to take account of particular conditions, Member States, may, if necessary, have an additional period of 3 years from 2 December, 2003, that is a total of 6 years to implement the provisions of the Directive on age and disability discrimination) and the definitions contained in the EE Act may require amendment.

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Gender Pay Gap Information Act 2021

- 1. Gender Pay Gap Information Act 2021**
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1. Gender Pay Gap Information Act 2021

The **Gender Pay Gap Information Act 2021** came into effect on 31st May 2022 and amended the **Employment Equality Act 1998** to require certain employers to report and publish information relating to the pay of their employees by reference to their gender to determine if any pay difference (gender pay gap) exists.

The gender pay gap refers to the difference between the average hourly rate of pay of men and women regardless of their level of seniority within the organisation. In order to calculate an employee's hourly rate of pay, an employer will be required to identify all salary and wage payments, including bonuses made to an employee during the reporting period to determine the overall amount of pay. The total pay should be divided by the total number of hours worked during the reporting period to determine the employee's hourly rate of pay.

Employers will then be required to calculate the average hourly rate of a female employee as a percentage of the average hourly rate of a male employee to determine its gender pay gap. If a pay gap exists, employers must identify the size of the pay gap, the reasons for the pay gap and the actions (if any) to be taken by the employer to eliminate or reduce any pay gap.

2. Employer Reporting Obligations

2.1 What Employers are Obligated to Report?

The Act applies to employers in both the public sector and private sector, who **employ not less than the minimum number of employees on the relevant date**. The gender pay gap reporting obligations are being introduced on a phased basis, commencing in 2022 for those employers who employ 250 or more employees. From year 4 onwards, the reporting obligations will apply to those employers who employ at least 50 employees. This is summarised as follows:

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Reporting Year	Number of Employees employed on the Relevant date
2022	250 or more
2023	250 or more
2024	150 or more
2025 and subsequent years	50 or more

When considering the number of employees employed, this refers to those who are employed under a contract of employment, which includes those who:

- Are employed under a contract of service or apprenticeship,
- Are employed on a part-time or temporary contract of employment,
- Are employed as an agency worker - the person who pays the wages of the agency worker is deemed to be the employer for the gender pay reporting purposes,
- Hold a public office (office holders), and
- Are engaged personally to carry out work or a service (**Note:** while the department has not published any guidance on this, it would appear that employers should include certain contractors who are engaged on a self-employed basis but not those who are engaged through an intermediary such as a personal services company or managed service company).

The published guidance indicates that partners in a partnership would be outside the scope of the definition of an employee, however those employers may choose to include the details of the partners in its calculations.

For the remainder of this chapter, it is assumed that the employer employs not less than the minimum number of employees on the relevant date and is required to report and publish its gender pay gap, unless otherwise stated.

2.2 What Employees should be included in the Reporting?

Employers should only include those **employees who are employed on the relevant date** in his calculations.

While all employees must be included to determine the number of employees employed by the employer on the relevant date, in instances where an employee does not self-identify as either male or female, the employer may omit such individuals from their gender pay gap calculations. The terms “male” and “female” are not defined in the Regulations, hence employers should not single out or question employees about their gender.

Employees who ceased employment during the reporting period should be excluded from the calculations as they were not employed on the relevant date.

In terms of a newly recruited employee, if they are employed on the relevant date, they must be counted to determine the headcount of the employer. If they have not received any pay during the reporting period, then they will not be included in the employer’s calculations.

2.3 What is the Relevant Date?

The **relevant date** is a date in the **month of June** each year, that is **selected by the employer** for the purpose of its gender pay gap reporting obligations. The relevant date is more commonly referred to as the “Snapshot date”.

To comply with the Act, employers should carry out a head count of all employees they employ, on the snapshot date, including employees who may not be rostered to work that day, or employees who are on leave (e.g. annual leave, maternity leave, paternity leave, parental leave, sick leave, etc.).

The Act applies to employers who employ 250 employees or more on the snapshot date, even where the number of employees reduces after the snapshot date. In contrast, the Act does not apply to employers who employ fewer than 250 employees on the snapshot date, even where the number of employees increases after the snapshot date, or where the employer had more employees in the past and may have been required to report in a previous year.

If an employer's workforce fluctuates above and below 250 employees in the month of June, they can avoid reporting its gender pay gap by selecting a snapshot date in June when its headcount was below 250.

Example 1

ABC has selected 30th June 2022 as its snapshot date. ABC employed 500 employees on this date.

As ABC has more than 250 employees on the snapshot date, they are required to report and publish their gender pay gap this year.

Example 2

DEF has selected 10th June 2022 as its snapshot date. DEF employed 240 full-time employees and 25 part-time employees on this date, of whom 15 were on annual leave, 5 were on maternity leave which is paid by the employer, 2 employees were on additional (unpaid) maternity leave and 3 employees were on parental leave.

As DEF has 265 employees on the snapshot date, they are required to report and publish their gender pay gap.

Example 3

GHI has selected 20th June 2022 as its snapshot date. GHI employed 245 employees on this date. GHI previously employed 260 employees, but 15 employees were made redundant on 10th June 2022.

As GHI only has 245 employees on its snapshot date, it is not required to report or publish its gender pay gap for 2022.

Example 4

JKL has selected 28th June 2022 as its snapshot date. JKL employed 240 employees on this date. JKL recruited 20 new employees who commenced employment on 1st July 2022.

As JKL only has 240 employees on its snapshot date, it is not required to report or publish its gender pay gap for 2022.

2.4 The Reporting Period

Employers are obliged to report on the average hourly pay gaps for the reporting period. The reporting period is the 12-month period ending on the snapshot date. If an employer selected 30th June as its snapshot date, the reporting period for this employer would be from 1st July to 30th

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June. If an employee did not receive any pay during the 12 month reporting period, they will not be included in the employer's calculations.

In order to report on its gender pay gap, employers are required to calculate the:

- Total Number of Working Hours,
- Total Ordinary Pay, and
- Total Bonus Pay

for each employee during the reporting period.

Employers are also required to:

- Identify those employees who received a benefit in kind, and
- Categorise those employees who are employed on a part-time basis and those who are employed on a temporary contract as the mean and median hourly pay gaps have to be reported separately for those on part-time or temporary contracts.

The definition of a part-time employee has the same meaning as in the **Protection of Employees (Part-Time Work) Act 2001** which is any employee whose normal hours of work are less than the normal hours of work of a comparable full-time employee.

While there is no definition of a temporary contract in the regulations, our understanding would be that a temporary contract refers to those employed on a fixed-term contract within the meaning of **Protection of Employees (Fixed-Term Work) Act 2003** (i.e. where the end of the contract is determined by a specific date, the completion of a specific task, or the occurrence of a specific event). The guidance published by the Department implies that those who are not employed on a Contract of Indefinite Duration on the snapshot date are employed on a temporary contract.

2.5 What Statistics must an Employer Report and Publish?

Once an employer has compiled and analysed its data, it is required to report on and publish the following information:

- Mean and median pay gaps between men and women,
- Mean and median bonus gaps between men and women,
- The proportion of men and women that received a bonus,
- The proportion of men and women that received benefits in kind, and
- The proportion of men and women in each of the four equally sized quartiles.

2.6 Reporting Deadline

Once an employer chooses a snapshot date, they have 6 months after that date to report and publish their gender pay gap. Hence if an employer selected 30th June as its snapshot date, the employer is required to report and publish its gender pay gap by 30th December.

3. Calculating the Total Number of Working Hours

Working hours are defined as the hours when the employee is available, or required to be available, at or near the place of his or her employment for the purpose of working. This only includes hours where the employee is awake for the purpose of working. Hours where the employee is asleep should not be included even if the employee sleeps at or near work in facilities provided by the employer.

Overtime hours and periods of **leave which are paid by the employer**, such as annual leave, public holidays, sick leave, maternity leave, adoptive leave, paternity leave, parent's leave, study leave, etc. should be included when calculating an employee's working hours.

In contrast, periods of **leave which are not paid by the employer**, such as parental leave, maternity leave, adoptive leave, paternity leave, parent's leave, additional maternity leave or additional adoptive leave, career break, unpaid sick leave, etc.) are not counted when calculating an employee's working hours.

Note: Employees are not entitled to be paid for maternity leave, adoptive leave, paternity leave, parent's leave, etc. unless it is provided for in their contract of employment.

While there are 3 different methods outlined in the Regulations for calculating the total number of working hours of an employee during the reporting period, the guidance published by the Department of Children, Equality, Disability, Integration and Youth outlines 4 methods of calculating an employee's total number of working hours.

Employers may use different methods for different categories of employees, depending on the working pattern of each employee, which are explained as follows.

3.1 Method 1 – Exact Hours Worked

Where the exact working hours of an employee are recorded for the reporting period, for example in a time management system, the employer can use the aggregate of these recorded hours as the total hours worked.

3.2 Method 2 – Normal Set Working Hours

Where an employee has normal set working hours, the number of hours worked by the employee during the reporting period can be derived from the weekly working hours specified in the employee's contract of employment in force on the snapshot date, multiplied by the number of weeks in the reporting period.

3.3 Method 3 – No Normal Working Hours

Where an employee has no normal working hours (e.g. casual workers), or the number of hours worked by the employee is not consistent (e.g. seasonal workers or where an employee may work longer hours at certain times of the year), the total number of working hours in the reporting period should be calculated as follows:

- (i) Where an employee has worked at least 12 weeks during the reporting period, the employee's total working hours in the reporting period should be calculated using the following formula:

$$A / 12 \times 52.14$$

Where A is the total number of hours worked by the employee during the 12 week period ending with the last full week of the reporting period. If the employee did not work any hours during this 12 week period, the employer should include the hours from an earlier week so that A always relates to the hours from a 12 week period.

- (ii) Where an employee has worked for less than 12 weeks during the reporting period, or if it is not reasonably possible for the employer to calculate the total number of working hours

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worked by the employee during the reporting period, the total working hours should be a number that fairly represents the employee's working hours in a year, having regard to:

- The average number of hours per week that the employee could expect to work under his contract, and
- The average number of hours worked per week by comparable employees working for the same employer.

3.4 Method 4 – Piecework

Where an employee is paid based on piecework, the employer should calculate the number of hours worked by the employee on piecework during the reporting period.

The published guidance indicates that this can be derived from the number of hours worked by the employee in the week in which the employer's snapshot date falls, multiplied by the number of weeks in the reporting period.

Example 5

ABC employed 500 employees on its snapshot date and is obliged to report on its gender pay gap. The workforce includes the following employees:

- Adam is a salaried employee and works a 39 hour week as required by his contract of employment
- Bianca is employed on a part-time basis and works 20 hours per week as required by her contract of employment
- Conall is employed on a casual basis. He has worked a total of 35 weeks during the reporting period and he worked a total of 220 hours during the 12 week period ending with the last full week of the reporting period.
- Dervla commenced employment in May and has worked a total of 120 hours during the last 8 weeks of the reporting period.

How should the total working hours for the reporting period of each of the above employees be calculated?

Solution 5

The total hours worked during the reporting period can be calculated as follows:

Adam:	39 hours x 52 weeks =	2,028 hours
Bianca:	20 hours x 52 weeks =	1,040 hours
Conall:	220 hours / 12 weeks x 52.14 =	955.9 hours
Dervla:	120 hours / 8 weeks x 52 weeks =	780 hours

4. Ordinary Pay, Bonus Pay and Benefits in Kind

In order to calculate an employee's hourly rate of pay, an employer will have to identify all elements of ordinary pay and bonuses paid to employees during the reporting period. The Euro equivalent amount should be used where an employee is paid in another currency, for example if an employee is working abroad. All amounts should be calculated before statutory deductions such as income tax, USC, PRSI, and Additional Superannuation Contribution payable by public servants. Ordinary pay should be calculated before deductions at source such as Revenue approved salary sacrifices and employee pension contributions.

4.1 Ordinary Pay

Ordinary pay means the following:

- a) Basic pay - i.e. the normal salary, wages or hourly rate paid to the employee.
- b) Allowances,
- c) Pay for piece work,
- d) Shift premium pay – this refers to the additional premium payable where an employee performs shift work, and
- e) Overtime pay.

While not specifically stated in the Regulations, ordinary pay includes **salary top-ups (i.e. amount paid by employer excluding any Department of Social Protection Benefits)** when employees are absent on leave such as sick leave, maternity leave, adoptive leave, paternity leave, parent's leave, etc. and salary payments when an employee is on gardening leave.

An **allowance** should only be reported in ordinary pay if it relates to the following:

- Ancillary duties of the employee, (e.g. on-call allowance, acting up allowance where an employee performs the duties of a higher grade for a temporary period of time, twilight allowance, etc.)
- Travel allowance which may cover travel to and from the normal place of work or to other locations,
- An allowance payable to an employee in respect of the purchase, lease or maintenance of a vehicle or other item which the employee uses for his employment, or
- Recruitment or retention allowance.

The above allowances are generally categorised as “round sum allowances” and should be included as ordinary pay.

Ordinary pay does not include:

- Reimbursement of expenses which were wholly and necessarily incurred by the employee in the course of their employment,
- The payment of civil service travel or subsistence rates,
- Statutory redundancy payments,
- Termination payments, or
- Remuneration other than money (e.g. Benefits in kind).

4.2 Bonus Pay

Bonus pay has a broad definition which covers payments in the form of:

- Money,
- Vouchers,
- Shares,
- Share options or interests in shares,
- Profit share,
- Productivity pay,
- Performance pay,
- Incentive pay, or
- Commission,

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but does not include ordinary pay as described above, statutory redundancy, termination payments or benefits in kind (BIK).

The definition above would appear to be contradictory in nature in that vouchers and shares are included but BIKs are excluded. In summary, BIKs should be excluded from the calculation of bonus pay unless they are specifically mentioned in the definition of bonus pay. With regard to vouchers, the value of vouchers given to employees should be included as part of their bonus pay regardless of whether the voucher qualified as a tax free BIK under the Small Benefit Exemption.

Regarding bonuses awarded in the form of shares, the bonus is deemed to be paid on the date on which the shares were given to the employee, and the amount is deemed to be the value of the shares when issued. With regard to a Restricted Stock Unit (RSU), it is the date on which the shares vest, as opposed to the date of grant.

4.3 Benefit in Kind

Benefits in kind (BIKs) include any non-cash benefit of an estimated monetary value such as free or subsidised medical insurance, company cars or vans, accommodation, preferential loans, vouchers, etc. The Regulations do not specify if only taxable BIKs should be included in the reporting, or whether non-taxable benefits should also be included.

For example, if an employee received a voucher tax free under the Small Benefit Exemption, it would appear that this employee should be included as receiving a BIK, as a voucher satisfies both the definition of a BIK and Bonus pay.

In relation to the reporting of BIKs, employers are only required to report the proportion of male and proportion of female employees who received a BIK.

The value of BIKs should not be included in the calculation of either ordinary pay or bonus pay, unless specifically mentioned above such as vouchers and share awards.

5. Calculating the Hourly Rate of Pay

One of the requirements for employers is to report on the hourly difference in pay of men and women (i.e. its gender pay gap). To calculate the hourly rate of pay the employer should follow the following steps.

Step 1

Identify all amounts of ordinary pay and bonus pay **paid to each employee during the reporting period**.

Step 2

Exclude from the ordinary pay any amount paid during the reporting period which relates to work done outside of the reporting period.

It would appear that the intention is to exclude arrears of pay which were paid during the reporting period but relate to a prior period. For example, if an employee received payment of arrears during the reporting period, which related to the last 5 years, it would seem logical that the portion which relates to the period prior to the reporting period is excluded.

However, this also has the potential to exclude pay for employees who are paid in arrears on an ongoing basis. For example, if an employer pays employees a week in arrears on a Friday and the

employer selects a snapshot date of Friday 24th June 2022. The reporting period runs from Friday 25th June 2021 to Friday 24th June 2022. As the weekly payment made on Friday 25th June 2021 relates to work done between 14th and 18th June 2021, it should be excluded. In addition, as the payment made on Friday 2nd July 2021 relates to work done between 21st June 2021 and 25th June 2021, 4 days of the payment made in this pay period should also be excluded.

Step 3

If bonus pay was paid to an employee during the reporting period and the bonus pay is in respect of a period (the “bonus period”) that is not the same duration as the reporting period (i.e. where the bonus pay relates to a period which is less than or greater than 12 months), the Regulations state that the bonus pay must be adjusted to match the reporting period (i.e. it must be annualised). This is done by dividing the bonus pay by the number of days in the bonus period and multiplying it by the number of days in the reporting period (i.e. 365).

For example, if an employee got a €50,000 bonus during the reporting period on the successful completion of a project which took 2 years to complete, only €25,000 of this amount should be included in the calculation of bonus pay ($\text{€}50,000 / 730 \times 365 = \text{€}25,000$).

However, where bonus pay is payable more frequently than on an annual basis (e.g. a monthly commission payment), if the calculation is carried out in accordance with the Regulations, it has the potential to distort the figures by inferring that an employee received more than they actually got in that reporting period. For example, if an employee received 6 months’ worth of commission payments during the reporting period totalling €6,000, the amount of the adjusted bonus pay that should be included in the calculation of the hourly rate is €12,033 ($\text{€}6,000 / 182 \text{ days} \times 365 = \text{€}12,033$).

The guidance published by the Department seeks to clarify this point as it states that bonus pay should only be adjusted where it relates to a period of more than 365 days. For example, where an employee receives a retention bonus after 5 years employment, only 1/5th of this amount should be included.

The other example included in the published guidance is not as clear. It states that where an employee receives an annual bonus of €2,000 on 31st December 2021, and quarterly commission of €1,000 in September and December 2021, and in March and June 2022. This comes to a total bonus pay of €6,000 during the relevant pay period from 1st July 2021 to the snapshot date of 30th June 2022. The bonus pay received covers a period of 546 days from 1st January 2021 to 30th June 2022 inclusive, which is greater than the 365 days of the reporting period. It would appear that this amount should be annualised as the bonus period is greater than 365 days, however the guidance states that, as none of the individual bonus payments is in respect of a period greater than 365 days, no adjustment of the bonus remuneration is required.

Any views taken by an employer in calculating adjusted bonus pay can be explained in the employer’s gender pay gap report.

Step 4

Once the adjustments outlined above in step 2 and 3 have been calculated, the total amounts of bonus pay and ordinary pay should be added together as outlined in step 1.

Step 5

The total amount obtained in step 4 should be divided by the number of working hours worked by the employee in the reporting period to calculate his hourly rate of pay.

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6. Information to be Published

6.1 Difference in Mean Hourly Pay Between Men and Women

Employers are required to calculate and report the difference between the mean hourly remuneration of male employees and female employees as a percentage of the mean hourly remuneration of male employees in accordance with the following formula:

$$(A - B) / A \times 100$$

Where **A** is the mean hourly remuneration of men and **B** is the mean hourly remuneration of women.

An employer is required to report 3 sets of mean hourly pay gaps as follows:

- The mean hourly gap between male and female employees based on the pay data for all employees.
- The mean hourly gap between part-time male employees and part-time female employees.
- The mean hourly gap between male employees and female employees who are employed on temporary contracts.

The mean is often referred to as the average and is one of the most commonly used statistical measures. The mean is the sum of the characteristics of the group (e.g. hourly pay rates, bonus, etc.) divided by the number of employees in the group. The mean can be skewed by exceptionally high or exceptionally low earners.

The “average” formula in excel can be used to calculate the mean.

6.2 Difference in Median Hourly Pay Between Men and Women

Employers are required to calculate and report the difference between the median hourly remuneration of male employees and female employees as a percentage of the median hourly remuneration of male employees in accordance with the following formula:

$$(A - B) / A \times 100$$

Where **A** is the median hourly remuneration of men and **B** is the median hourly remuneration of women.

An employer is required to report 3 sets of median hourly pay gaps as follows:

- The median hourly gap between male and female employees based on the pay data for all employees.
- The median hourly gap between part-time male employees and part-time female employees.
- The median hourly gap between male employees and female employees who are employed on temporary contracts.

The median is **the middle number in the data set** which can be determined by placing all the numbers in ascending value and finding the middle number in the data set. If there are two middle numbers, then take the average of the two middle numbers to obtain the median.

The median provides a more appropriate measure of the central tendency of a group as it is not skewed by exceptionally high or exceptionally low values which impact on the mean value.

The “median” formula in excel can be used to calculate the median hourly rate of pay, without having to sort the hourly rates in ascending order.

6.3 Difference in Mean Bonus Remuneration Between Men and Women

Employers are required to report the difference between the mean bonus remuneration of male employees and female employees as a percentage of the mean bonus remuneration of male employees in accordance with the following formula:

$$(A - B) / A \times 100$$

Where **A** is the mean bonus remuneration of men who were paid bonus pay during the reporting period and **B** is the mean bonus remuneration of women who were paid bonus pay during the reporting period.

There is no requirement to report this information separately for part-time employees or employees on temporary contracts.

6.4 Difference in Median Bonus Remuneration Between Men and Women

Employers are required to report the difference between the median bonus remuneration of male employees and female employees as a percentage of the median bonus remuneration of male employees in accordance with the following formula:

$$(A - B) / A \times 100$$

Where **A** is the median bonus remuneration of men who were paid bonus pay during the reporting period and **B** is the median bonus remuneration of women who were paid bonus pay during the reporting period.

There is no requirement to report this information separately for part-time employees or employees on temporary contracts.

6.5 Percentage of Male Employees who Received Bonus Remuneration

Employers must report the proportion of men who received bonus pay during the reporting period in accordance with the following formula:

$$(A / B) \times 100$$

Where **A** is the number of men who received bonus pay during the reporting period and **B** is the total number of male employees.

6.6 Percentage of Female Employees who Received Bonus Remuneration

Employers must report the proportion of women who received bonus pay during the reporting period in accordance with the following formula:

$$(A / B) \times 100$$

Where **A** is the number of women who received bonus pay during the reporting period and **B** is the total number of female employees.

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6.7 Percentage of Male Employees who received a BIK

Employers must report the proportion of men who received a BIK during the reporting period in accordance with the following formula:

$$(A / B) \times 100$$

Where **A** is the number of men who received a BIK during the reporting period and **B** is the total number of male employees.

6.8 Percentage of Female Employees who received a BIK

Employers must report the proportion of women who received a BIK during the reporting period in accordance with the following formula:

$$(A / B) \times 100$$

Where **A** is the number of women who received a BIK during the reporting period and **B** is the total number of female employees.

6.9 Quartile Pay Bands

Employers are required to publish information relating to their quartile pay bands. The quartiles that employees should be divided into are:

- Lower quartile pay band
- Middle quartile pay band
- Upper middle quartile pay band
- Upper quartile pay band

In order to group employees into quartile pay bands, the employer should rank all employees from lowest to highest based on their hourly rate of pay. The employees should then be divided into the 4 quartiles as outlined above, with each quartile comprising an equal number (in so far as possible) of employees.

Where an employer has a large number of employees with the same hourly rate of pay, it is possible that some of those employees who are on the same hourly rate will fall into different quartiles. Where this happens, employers should try and ensure that there is a proportional representation of males and females within each quartile.

Within each quartile the employer is required to report:

- i) The **proportion of men** within that quartile as a percentage of the total number of employees in that quartile using the following formula:

$$(A / B) \times 100$$

Where **A** is the number of men in that quartile and **B** is the total number of employees in the quartile.

- ii) The **proportion of women** within that quartile as a percentage of the total number of employees in that quartile using the following formula:

$$(A / B) \times 100$$

Where **A** is the number of women in that quartile and **B** is the total number of employees in the quartile.

7. Publication of the Gender Pay Gap

Employers have 6 months from the snapshot date to publish the required statistics as outlined above. Where any of the statistics indicate differences in relation to gender, they must be accompanied by a report (i.e. a Gender Pay Gap Report) which is a written statement setting out the reasons for the differences, and the measures (if any) being taken, or proposed to be taken, to eliminate or reduce the differences.

Where certain views or assumptions are made by an employer in respect of the treatment of certain payments in the calculation of ordinary pay or bonus pay, etc., this can be highlighted in the employer's gender pay gap report.

Some actions an employer could consider taking to reduce its gender pay gap include:

- Improve workplace flexibility
- Have family friendly policies
- Include more women on shortlists for recruitment or promotion
- Use structured interviews or skills-based assessment for recruitment and promotions
- Encourage salary negotiation
- Have transparent promotion and reward process
- Offer training, mentoring or leadership programmes

The statistics and/or Gender Pay Report should be published on the employer's website in a manner that is accessible to all employees and the public. If the employer does not have a website, the information should be made available at the employer's registered office or main place of business.

The statistics and/or Gender Pay Report must remain available for a period of at least 3 years from the date of publication.

Plans are in place to develop a central online reporting system for 2023 where all employer reports will be uploaded and will be accessible to the public.

8. Complaints Procedure

An employee who claims that his or her employer has failed to comply with the Regulations may refer a dispute to the Workplace Relations Commission (WRC) for adjudication by an Adjudication Officer. The Adjudication Officer has the power to request further information to determine the credibility of the complaint if necessary.

Where the complaint is upheld, a determination of an Adjudication Officer may order the employer to take a particular course of action to comply with the Regulations. Either party can appeal the decision of the WRC to the Labour Court within 6 weeks (42 days) from the date of the decision. The appellant is required to notify the other party of the appeal.

Where the person claims to have been discriminated against or victimised, or claims they are not receiving equal pay or benefits, this will be investigated under the **Employment Equality Acts 1998 to 2021**, and where successful, compensation maybe awarded under the provisions of that Act.

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In addition, where the Irish Human Rights and Equality Commission (IHREC) have reasonable grounds for believing that an employer is not complying with the Regulations, they may make an application to either the Circuit Court or High Court for an order requiring the employer to comply with the Regulations.

9. Case Study

For ease of illustration we are basing this case study on 30 employees, while we acknowledge that only employers with more than 250 employees are required to report their gender pay gap.

ABC has 30 employees on its snapshot date in June. The total ordinary pay and bonus pay for each employee is summarised below along with the hours worked by each employee during the 12 month reporting period. The summary also outlines:

- The gender of each employee
- Full-time or part-time status,
- Those on temporary contracts, and
- Those who are in receipt of a BIK.

Note: An employer is only required to publish the key statistics as required in the legislation. Employers are not required to publish their workings. We have included the workings below for illustrative purposes.

Gender Pay Gap Information Act 2021

EE	Gender	Part Time	Full or Temp Contract	Ordinary Pay	Bonus Pay	Total Pay	Weekly Hours	Weeks worked	Hours Worked	Hourly Rate	BIK
1	M	FT		€120,000	€12,000	€132,000	37.50	52	1,950	67.69	Y
2	F	FT		€115,000	€11,500	€126,500	37.50	52	1,950	64.87	Y
3	M	FT		€110,000	€11,000	€121,000	37.50	52	1,950	62.05	Y
4	M	FT		€75,000	€7,500	€82,500	37.50	52	1,950	42.31	Y
5	F	FT		€70,000	€7,000	€77,000	37.50	52	1,950	39.49	Y
6	M	FT		€60,000	€6,000	€66,000	37.50	52	1,950	33.85	Y
7	M	FT		€52,000	€5,200	€57,200	37.50	50	1,875	30.51	Y
8	F	FT		€48,000	€4,800	€52,800	37.50	52	1,950	27.08	Y
9	M	FT		€47,500	€4,750	€52,250	37.50	51	1,913	27.32	Y
10	M	FT		€45,000	€4,500	€49,500	37.50	52	1,950	25.38	Y
11	M	FT		€45,000	€4,500	€49,500	37.50	52	1,950	25.38	Y
12	F	FT		€42,500	€4,250	€46,750	37.50	36	1,350	34.63	Y
13	M	FT		€40,000	€4,000	€44,000	37.50	47	1,763	24.96	Y
14	M	FT	T	€38,000	€3,800	€41,800	37.50	52	1,950	21.44	Y
15	M	FT		€36,000	€3,600	€39,600	37.50	52	1,950	20.31	Y
16	F	FT		€36,000	€3,600	€39,600	37.50	52	1,950	20.31	Y
17	M	FT	T	€35,000	€3,500	€38,500	37.50	50	1,875	20.53	Y
18	F	FT	T	€35,000	€3,500	€38,500	37.50	52	1,950	19.74	Y
19	M	FT		€34,000		€34,000	37.50	52	1,950	17.44	
20	F	FT		€34,000	€3,400	€37,400	37.50	52	1,950	19.18	Y
21	M	FT	T	€32,000	€3,200	€35,200	37.50	52	1,950	18.05	Y
22	F	PT		€29,000		€29,000	37.50	26	975	29.74	Y
23	M	FT		€28,000	€2,800	€30,800	37.50	52	1,950	15.79	Y
24	F	PT		€18,000	€1,800	€19,800	32.00	52	1,664	11.90	Y
25	M	PT		€14,500	€1,450	€15,950	18.00	52	936	17.04	
26	M	PT		€14,000	€1,400	€15,400	24.00	52	1,248	12.34	Y
27	F	PT	T	€25,000		€25,000	30.00	48	1,440	17.36	Y
28	F	PT		€26,000	€2,600	€28,600	30.00	52	1,560	18.33	Y
29	M	FT		€29,000		€29,000	37.50	52	1,950	14.87	
30	F	PT		€10,000	€1,000	€11,000	20.00	40	800	13.75	Y
Female		12		Fulltime		23					
Male		18		Parttime		7					
		30		Temporary		5					

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EE	Gender	FT or PT	Temp	Hourly Rate	Male	Female
1	M	FT	0	67.69	67.69	
2	F	FT	0	64.87		64.87
3	M	FT	0	62.05	62.05	
4	M	FT	0	42.31	42.31	
5	F	FT	0	39.49		39.49
6	M	FT	0	33.85	33.85	
7	M	FT	0	30.51	30.51	
8	F	FT	0	27.08		27.08
9	M	FT	0	27.32	27.32	
10	M	FT	0	25.38	25.38	
11	M	FT	0	25.38	25.38	
12	F	FT	0	34.63		34.63
13	M	FT	0	24.96	24.96	
14	M	FT	T	21.44	21.44	
15	M	FT	0	20.31	20.31	
16	F	FT	0	20.31		20.31
17	M	FT	T	20.53	20.53	
18	F	FT	T	19.74		19.74
19	M	FT	0	17.44	17.44	
20	F	FT	0	19.18		19.18
21	M	FT	T	18.05	18.05	
22	F	PT	0	29.74		29.74
23	M	FT	0	15.79	15.79	
24	F	PT	0	11.90		11.90
25	M	PT	0	17.04	17.04	
26	M	PT	0	12.34	12.34	
27	F	PT	T	17.36		17.36
28	F	PT	0	18.33		18.33
29	M	FT	0	14.87	14.87	
30	F	PT	0	13.75		13.75
Mean Hourly Rate of Pay				27.12	27.63	26.37
Median Hourly Rate of Pay				20.98	23.20	20.03
Gender Pay Gap - Mean						
All Employees						
4.56%						
Part-time Employees						
-24.01%						
Temporary Employees						
7.27%						
Gender Pay Gap - Median						
All Employees						
13.68%						
Part-time Employees						
-18.18%						
Temporary Employees						
9.65%						

Gender Pay Gap Information Act 2021

EE	Gender	Bonus Pay	Male	Female	
1	M	12,000.00	12,000.00		
2	F	11,500.00		11,500.00	
3	M	11,000.00	11,000.00		
4	M	7,500.00	7,500.00		
5	F	7,000.00		7,000.00	
6	M	6,000.00	6,000.00		
7	M	5,200.00	5,200.00		
8	F	4,800.00		4,800.00	
9	M	4,750.00	4,750.00		
10	M	4,500.00	4,500.00		
11	M	4,500.00	4,500.00		
12	F	4,250.00		4,250.00	
13	M	4,000.00	4,000.00		
14	M	3,800.00	3,800.00		
15	M	3,600.00	3,600.00		
16	F	3,600.00		3,600.00	
17	M	3,500.00	3,500.00		
18	F	3,500.00		3,500.00	
19	M	-	-		
20	F	3,400.00		3,400.00	% of Men who got Bonus Pay
21	M	3,200.00	3,200.00		89%
22	F	-		-	
23	M	2,800.00	2,800.00		
24	F	1,800.00		1,800.00	% of Women who got Bonus Pay
25	M	1,450.00	1,450.00		
26	M	1,400.00	1,400.00		83%
27	F	-		-	
28	F	2,600.00		2,600.00	Mean Bonus Gap
29	M	-	-		
30	F	1,000.00		1,000.00	17.71%
Mean Bonus		4,088.33	4,400.00	3,620.83	Median Bonus Gap
Median Bonus		3,600.00	3,900.00	3,450.00	11.54%

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EE	Gender	BIK	Male	Female	
1	M	Y	Y		
2	F	Y		Y	
3	M	Y	Y		
4	M	Y	Y		
5	F	Y		Y	
6	M	Y	Y		
7	M	Y	Y		
8	F	Y		Y	
9	M	Y	Y		
10	M	Y	Y		
11	M	Y	Y		
12	F	Y		Y	
13	M	Y	Y		
14	M	Y	Y		
15	M	Y	Y		
16	F	Y		Y	
17	M	Y	Y		
18	F	Y		Y	
19	M	-	-		
20	F	Y		Y	
21	M	Y	Y		
22	F	Y		Y	
23	M	Y	Y		
24	F	Y		Y	
25	M	-	-		
26	M	Y	Y		% of Men who got a BIK
27	F	Y		Y	83.33%
28	F	Y		Y	
29	M	-	-		
30	F	Y		Y	% of Women who got a BIK
BIK		27	15	12	100%

Gender Pay Gap Information Act 2021

EE	Gender	Hourly Rate	Quartile
1	M	11.90	Lower
2	F	12.34	Lower
3	M	13.75	Lower
4	M	14.87	Lower
5	F	15.79	Lower
6	M	17.04	Lower
7	M	17.36	Middle
8	F	17.44	Middle
9	M	18.05	Middle
10	M	18.33	Middle
11	M	19.18	Middle
12	F	19.74	Middle
13	M	20.31	Middle
14	M	20.31	Middle
15	M	20.53	Upper Middle
16	F	21.44	Upper Middle
17	M	24.96	Upper Middle
18	F	25.38	Upper Middle
19	M	25.38	Upper Middle
20	F	27.08	Upper Middle
21	M	27.32	Upper Middle
22	F	29.74	Upper Middle
23	M	30.51	Upper
24	F	33.85	Upper
25	M	34.63	Upper
26	M	39.49	Upper
27	F	42.31	Upper
28	F	62.05	Upper
29	M	64.87	Upper
30	F	67.69	Upper

Lower Quartile		Middle Quartile		Upper Middle Quartile		Upper Quartile	
Male	Female	Male	Female	Male	Female	Male	Female
67%	33%	38%	63%	75%	25%	63%	38%

CHAPTER 52

Minimum Notice and Terms of Employment Acts 1973 to 2005

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Excluded Employees**
 - 4. Continuous Service**
 - 5. Minimum Notice Periods for Employees**
 - 6. Rights of an Employee during a Period of Notice**
 - 7. Employer's Right to Notice**
 - 8. Waiving Right to Notice or Accepting Pay in Lieu**
 - 9. Misconduct and Summary Dismissal**
 - 10. Redress Provisions**
-

1. Main Provisions

The **Minimum Notice and Terms of Employment Acts 1973 to 2005** provide that a specific minimum period of notice must be given by both employers and employees when terminating a contract of employment. The amount of notice which an employee is entitled to depends on his length of continuous service and his conduct.

Note: As the name suggests, the **Minimum Notice and Terms of Employment Acts 1973 to 2005** previously dealt with the requirement for an employer to provide an employee with a written statement of his terms of employment. This part of the Act was repealed and replaced by the **Terms of Employment (Information) Acts 1994 to 2014**.

2. Covered Employees

The Acts apply in most employments to employees who have at least 13 weeks continuous service with the same employer. This includes apprentices and civil servants.¹

3. Excluded Employees

The Acts do not apply to:²

- The immediate family of the employer (father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister of the employer) provided they live with him or her and are employed in the same private house or farm
- Members of the Permanent Defence Forces
- Members of An Garda Síochána
- Seamen signing on under the Merchant Shipping Act.

¹ Section 1A inserted by Civil Service Regulation (Amendment) Act 2005

² Section 3(1)

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4. Continuous Service

An employee's service is regarded as continuous unless he is dismissed or voluntarily leaves his job. A lock-out or lay-off is not regarded as a termination of the employee's service by the employer. Strike action taken by an employee does not amount to the employee voluntarily leaving his employment. Continuity of employment is not broken by the dismissal of an employee and the immediate re-employment of the employee, for example the reinstatement or reengagement of an employee under the **Unfair Dismissals Acts 1977 to 2015**. The transfer of a business is not regarded as a break in continuous service. An employee is deemed to have voluntarily left his employment where he decides to claim a statutory redundancy payment following the requisite period of lay-off or short time.

4.1 Calculating the Period of Continuous Service

The following periods are included when calculating the period of continuous service:³

- An absence by an employee arising due to service in the Reserve Defence Forces.
- An absence of up to 26 weeks due to lay-off, sickness or injury, or by agreement with the employer.
- If in any week, or part of a week, an employee was absent due to a lock-out, that week counts as a period of service.
- If in any week, or part of a week, an employee was absent due to a strike or lock-out in any business other than that in which he is employed, that week counts as a period of service.
- Absence on maternity, paternity, parent's adoptive, carer's, parental or force majeure leave.

However, the following absences are not counted when calculating the period of continuous service:

- An absence in excess of 26 weeks due to lay-off, sickness or injury, or by agreement with the employer, or
- An absence due to an employee taking part in a strike relating to the business in which the employee is employed.

Example 1

Andrew commenced employment in January 2012 and ceased employment in December 2022. He had the following absences during his employment:

- 52 weeks of sick leave in 2013,
- 14 weeks parental leave in 2015,
- 78 weeks on a career break in 2017 and 2018.

Calculate the minimum notice period Andrew is entitled to.

Solution 1

The minimum notice period Andrew is entitled to is 4 weeks based on 9.5 years of service. Only the first 26 weeks of sick leave and career break count as service. The additional 26 weeks of his sick leave absence and the additional 52 weeks of his career break are not counted as part of his continuous service.

³ First Schedule

5. Minimum Notice Periods for Employees

An employee who has at least 13 weeks continuous service with the same employer is entitled to a minimum period of notice before the employer may dismiss him. This period varies according to the length of his employment as follows:⁴

Length of Service	Minimum Notice
13 weeks but less than 2 years	1 week
2 years but less than 5 years	2 weeks
5 years but less than 10 years	4 weeks
10 years but less than 15 years	6 weeks
15 years or more	8 weeks

An employee with less than 13 weeks employment is not entitled to any period of notice unless it is provided for in his contract of employment. The Act provides for a statutory minimum period of notice, however an employer and employee may agree to a longer period of notice which may be stated in the employee's contract of employment. Where an employer fails to honour any greater period of notice which may be specified in the employee's contract of employment, while the employee cannot seek redress under this Act for that additional period, it is open to the employee to present a case to the relevant court.

It is not a statutory requirement that notice should be given in writing, however it is advisable to do so in order to avoid any dispute arising regarding whether the required period of notice was given or not.

Even though the law provides for a minimum period of notice to be given to an employee, there are occasions when the legal minimum notice may not be sufficient, especially where the period of notice was never agreed between the employee and employer on commencement of employment, and it is open to an employee to argue that he should have been given more than the minimum legal period of notice, as is illustrated in the following two law cases.

Case Law: Tierney v Irish Meat Packers (1989) (8 JISLL 59)

An employee with nine years' service as Group Credit Controller was given the statutory minimum notice of four weeks. The High Court considered that this was not reasonable, and the employee was awarded six months' notice.

Case Law: Lyons v M.F. Kent (International) Ltd. (1996) (ELR 103)

The employee was a qualified person who carried on his profession in Ireland before being transferred abroad by his employer. The employee took an action against his employer in relation to the period of notice he received. It was decided that the period of notice had to be reasonable taking all the circumstances into consideration including his status and level of responsibility. A 12 month notice period was applied in this case.

6. Rights of an Employee during a Period of Notice

An employee is entitled to be paid by his employer during the period of notice in accordance with the terms of his contract of employment and has the same rights to sick pay or paid annual leave as he would have if notice of termination of his contract of employment had not been given.

⁴ Section 4

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An employee is entitled to be paid by his employer in respect of any time during his normal working hours when he is ready and willing to work but no work is provided for him by his employer. Normal working hours includes overtime where the employee is normally expected to work overtime. Where an employee's pay is not wholly calculated by reference to a time rate (e.g. a basic salary plus commission, piece rates, etc.), his pay should be calculated based on the average rate of the pay earned by the employee in respect of any time worked during the 13 weeks preceding the giving of notice.

Where an employee does not have normal working hours, he is entitled to be paid an average of his weekly earnings, calculated over the 13 week period preceding the giving of the notice, during each week in the period of notice. An employer is not liable to pay such employees any amount unless the employee is ready and willing to do work of a reasonable nature and amount to earn this average amount of his weekly earnings over the last 13 weeks.

Case Law: An Employee v An Employer EAT Case No. (WT 148/2008)

The employee told his employer that he was taking 2 weeks' annual leave. The employer refused on the grounds that the employee had already taken 2 weeks off and was only entitled to a statutory period of 1 week. The time when annual leave may be taken is at the discretion of the employer.

*The employer decided to dismiss the employee and offered the employee the opportunity to work his notice. The employee declined as he was leaving the country that week. The **Minimum Notice and Terms of Employment Acts 1973 to 2005** states that an employee is entitled to the notice or a payment in lieu thereof. Despite the inability of the employee to work his period of notice, the employer had fulfilled the statutory requirement of giving notice and thus did not have to pay the employee in lieu of notice. The employee's claim against his employer failed.*

7. Employer's Right to Notice

An employer is entitled to at least 1 week's notice from an employee who has been employed by the employer for 13 weeks' or more and who proposes to give up his job.⁵ This entitlement to 1 weeks' notice applies regardless of the length of time the employee has been employed (e.g. an employee with 20 years' continuous service can leave his place of employment on giving 1 weeks' notice), yet in similar circumstances an employer must give an employee at least 8 weeks' notice to dismiss him.

If an employer requires a longer period of notice from his employee, he should ensure that this is included as a term in the employee's contract of employment.

Since the introduction of the **Workplace Relations Act 2015** on 1st October 2015, the Act has been amended to state that in cases where there is a dispute as to the entitlement of the employer to a minimum period of notice, an Adjudication Officer may issue such directions as he considers appropriate.⁶

⁵ Section 6

⁶ Section 12 (2) inserted by Workplace relations Act 2015

8. Waiving Right to Notice or Accepting Pay in Lieu

Any provision in a contract of employment for periods of notice shorter than the minimum periods stipulated in the Acts has no effect.⁷ The Acts do not, however, prevent an employer or employee from waiving his right to receive notice or accepting payment in lieu of notice.⁸

Where an employee waives his right to notice or accepts a payment in lieu of notice, it is prudent for an employer to get a signed statement to this effect from the employee. A payment in lieu of notice occurs where an employee agrees to accept a payment from his employer instead of working out his period of notice.

Where an employee accepts a payment in lieu of notice, for the purpose of calculating his statutory redundancy, if applicable, his leave date is deemed to be the date that the notice, if given, would have expired.

9. Misconduct and Summary Dismissal

Dismissal without notice is known as ‘summary dismissal’. The Acts do not affect the right of an employer (or an employee) to terminate a contract of employment without notice due to the ‘misconduct’ of the other party.⁹ However, in practice “summary dismissal” is only upheld in cases of serious misconduct. Examples of serious misconduct by an employee include theft or assault. In such cases, the employer may be justified in dismissing the employee on the spot, i.e. summary dismissal without notice. However, it must be stressed that the employer must apply the company’s grievance and disciplinary procedure before any summary dismissal.

10. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled “Introduction to Employment Law”. If an employee is successful in taking an action against his employer, the Adjudication Officer will issue a determination which may include a direction that the employer pays the employee compensation for any loss sustained by the employee by reason of the contravention.¹⁰

⁷ Section 4(5)

⁸ Section 7

⁹ Section 8

¹⁰ Section 12 as amended by the Workplace Relations Act 2015

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Redundancy Payments Acts 1967 to 2022

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Definition of Redundancy**
 - 4. Calculation of Statutory Redundancy Payment**
 - 5. Continuous and Reckonable Service**
 - 6. Employers' Obligations during Redundancy**
 - 7. Short Time and Lay Off**
 - 8. Employers' Failure to pay Redundancy**
 - 9. Complaints Procedure**
 - 10. Non-Statutory Payments**
 - 11. Collective Redundancy**
 - 12. Transfer of Undertakings**
-

1. Main Provisions

The **Redundancy Payments Acts 1967 to 2022** impose a statutory obligation on employers to pay a statutory redundancy payment to qualifying employees on redundancy. The amount of statutory redundancy payable is related to the employee's length of service and his normal gross weekly earnings, subject to a maximum amount of €600 per week.

2. Covered Employees

In order to be covered by the Acts, employees must:

- Be aged 16 and over. Employees aged 66 or over (insurable at PRSI Class J) which except for their age, would be insurable at PRSI Class A are also covered; and
- Have 104 weeks (2 years) continuous service over the age of 16, and
- Be insurable for all benefits under the Social Welfare Acts (PRSI Class A contributors). This requirement does not apply to part time employees. Part-time employees insurable under PRSI Class J are also entitled to statutory redundancy subject to the above conditions being satisfied.

Apprentices are also covered by the Acts provided they fulfil the conditions outlined above. However, when they finish their apprenticeships, their employers have one month to end their service with no obligation to pay statutory redundancy. If an employee is kept on for more than one month after completing his apprenticeship, the period spent as an apprentice over 16 years of age will be deemed reckonable service in calculating any redundancy lump sum should he be made redundant in the future.

¹ Redundancy Payments Act 1967, Section 4, as amended by Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007

3. Definition of Redundancy

Generally speaking, a redundancy situation arises where an employee's job ceases to exist, and he is not replaced for such reasons as rationalisation or reorganisation, not enough work available, the financial state of the firm, company closures, etc.²

The legislation provides that a statutory redundancy arises where an employee's dismissal arises wholly or mainly where:

- The employer ceased to carry on business for which the employee was employed, or in the place where the employee was employed,
- The requirements for employees have ceased or diminished,
- The employer has decided to carry on business with fewer or no employees, whether by requiring the work which the employee had done to be carried on by other workers or otherwise,
- The work which the employee had done is to be done in a different manner for which the employee is not properly qualified or trained,
- The work, which the employee had done, is to be done by a person also capable of doing other work for which the employee is not properly qualified or trained.

A statutory redundancy will not arise where all of the following conditions are met:

- the dismissal is one of a number of dismissals which constitute a collective redundancy as defined in the **Protection of Employment Act 1977 to 2014**,
- the dismissals were effected on a compulsory basis,
- the dismissed employees are replaced, at the same location or elsewhere in the State by:
 - other persons who are, or are to be, directly employed by the employer, or
 - other persons whose services are, or are to be, provided to that employer in pursuance of other arrangements,
- those other persons will perform essentially the same functions as the dismissed employees, **and**
- the terms and conditions of employment of those other persons are materially inferior to those of the dismissed employees.

Where an employee is dismissed for any reason other than redundancy (e.g. misconduct or inefficiency), he is not entitled to a redundancy payment, but may make a claim under the **Unfair Dismissals Acts 1977 to 2015** if he feels he was unfairly dismissed. In addition, where an employee is directly replaced in the same job by another employee, a redundancy situation does not arise except where the employee is replaced by one of the employer's immediate family. This exception only applies to an employer who is a sole trader as companies and partnerships are separate legal entities from the people who own them.

The following situations highlight when a redundancy situation does not arise:

- An employer renews a contract of employment for an employee or re-engages an employee under a new contract with the same provisions of the original contract, with immediate effect i.e. there is no break between contracts; the employee is not entitled to a redundancy payment from his employer, even where the employee refuses to accept the new contract.

² Section 7(2) as amended by Section 4 of Redundancy Payments Act 1971 and Section 5 of Redundancy Payments Act 2003

- An employer renews a contract or re-engages an employee under a contract with different provisions and the new contract commences within 4 weeks of the original contract ending, the employee is also deemed not eligible for a redundancy payment, even where the employee refuses to accept the new contract.

Case Law: Coyle v Dublin Institute of Technology (RP 67/98)

Mr. Coyle was a part-time lecturer. He then became a yearly lecturer by replacing a permanent staff member who was away. On the return of the permanent staff member, Mr. Coyle's new job was terminated. The question was whether the new job performed by Mr. Coyle was the same as the position of his predecessor. If the job was different, then once the job came to an end the job was extinguishable and therefore there was a redundancy. However, if the job was the same and Mr. Coyle was merely temporary, then there was no redundancy. It was held that there was no difference between the nature of the position held when Mr. Coyle possessed it compared to his predecessor, which meant that there was no redundancy.

4. Calculation of Statutory Redundancy Payment

When a covered employee is dismissed by reason of redundancy, he is entitled to a lump sum redundancy payment from his employer. This lump sum payment is known as the statutory redundancy payment. The calculation of a statutory redundancy payment³ is as follows:

- 2 weeks' pay for each year of continuous and reckonable employment with his current employer since the age of 16.
- All excess days should be calculated as a portion of a year and a payment made accordingly. If an employee had 9 years and 110 days of service with his employer when he was made redundant, he would be entitled to a redundancy payment for 9.3 years ($110/365 = 0.3$)
- Plus one week's pay.

This statutory payment is based on an earnings ceiling of €600 per week (or €31,200 per year). There is no income tax, PRSI or USC payable on a statutory redundancy payment. The Department of Social Protection provides an online redundancy calculator on its MyWelfare site <https://www.mywelfare.ie/redundancycalculator> to calculate statutory redundancy payments.

4.1 Normal Weekly Earnings

As mentioned previously, the amount payable to an employee in respect of statutory redundancy is related to the employee's length of service and to his normal weekly earnings (gross weekly wage, average regular overtime and the value of any Benefits-in-Kind (BIKs)), all added together, subject to a maximum of €600 per week. The reimbursement of expenses paid to an employee by his employer should not be taken into account when calculating normal weekly earnings where the expenses were incurred by the employee while performing his duties as an employee.

When calculating a redundancy payment due to an employee who works for a fixed wage or salary, his gross weekly wage is his earnings for his normal weekly working hours at the date he was made redundant. This figure should include any regular bonus or allowance which does not vary in relation to the amount of work done by the employee. In addition, the value of any BIKs provided to the employee such as the provision of a company car, free accommodation, medical insurance, etc. must also be taken into account. Where an employee is normally required to work

³ Schedule 3 of 1967 Act as amended by section 11 of the 2003 Act

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overtime, his average weekly overtime earnings must also be included and should be calculated by using the following formula:

Total amount of overtime earnings in the period of 26 weeks ending 13 weeks before the date of notification of redundancy, divided by 26 = average weekly overtime earnings.

An employee whose pay depends on the amount of work done i.e. piece rates, bonuses or commission, etc. will have his normal weekly earnings calculated as follows:

- (a) Calculate the total number of hours worked in the 26 week period ending 13 weeks before the date of notification of redundancy. Where an employee did not work during this 26 week period, the employer must include the hours worked in the last 26 weeks when the employee actually worked.
- (b) Calculate the total pay earned in this 26 week period adjusted to take account of any changes in rates of pay which came into effect during the 13 weeks before the date of notification of redundancy.
- (c) Divide the total pay earned calculated at (b) above by the number of hours worked calculated at (a) above to establish the employee's average hourly rate of pay. The normal weekly earnings is then calculated by multiplying the average hourly rate of pay by the number of normal weekly working hours at the date of notification of redundancy.

This method of calculation of normal weekly earnings also applies to shift-workers whose pay varies according to the shift they are on and to employees whose pay varies based on the day of the week or the time of the day they work.

If an employee has no normal working hours, his average weekly earnings is his average weekly pay including any bonus, allowance or commission earned over the 52 week period when he was working before the date of notification of redundancy.

5. Continuous and Reckonable Service⁴

5.1 Continuous Service

For statutory redundancy purposes, employment is deemed to be continuous unless it is terminated by the employer or the employee voluntarily leaves the position. Continuous service is not broken by:

- Sick leave
- Lay-off
- Annual leave
- Adoptive leave, maternity leave, parental leave, force majeure leave, paternity leave, parent's leave and carer's leave
- Service in the Reserve Defence Forces,
- Strike
- Transfer of a business,
- Reinstatement, and usually reengagement under the **Unfair Dismissals Acts 1977 to 2015**,

⁴ Schedule 3 of 1967 Act as amended by section 11 of the 2003 Act

- Breaks authorised by an employer (e.g. a career break).

5.2 Reckonable Service

While an employee's service may be continuous, it may not all be reckonable for statutory redundancy purposes. An employee's statutory redundancy payment is based on his reckonable service. The following absences during the 3 year period ending with the date of termination do not count as reckonable service and should be disregarded when calculating an employee's reckonable service for statutory redundancy purposes:

- Strikes,
- Periods of lay-off,
- Periods of illness in excess of 26 weeks,
- Periods of illness in excess of 52 weeks due to occupational injury.

All service prior to this 3 year period is fully reckonable for redundancy purposes even if the employee was absent due to any of the reasons outlined above.

Example 1

Alan commenced employment on 1st February 2021. He earned €550 per week and was insured under PRSI class A. His position was made redundant on 31st January 2023 following a period of 26 weeks on temporary lay-off. Calculate Alan's statutory redundancy entitlement.

Solution 1

Alan has 2 years' continuous service from 1st February 2021 to 31st January 2023. However, the 26 week period of lay-off is not regarded as reckonable service. His statutory redundancy payment is based on 1.5 years reckonable service, calculated as follows:

Total period of service =	2 years (104 weeks)
Non reckonable service =	0.5 years (26 weeks)
Reckonable service =	1.5 years (78 weeks)

Statutory Redundancy Calculation

Weekly Pay	€550
Reckonable Service	1.5 years

2 weeks' pay for each year of service	$\text{€}550 \times 2 \times 1.5 =$	€1,650
Add 1 bonus week		€550
Total Statutory Redundancy		€2,200

Example 2

Paul was made redundant on 31st January after 15 years and six months service. His weekly pay was €850. Paul suffered an occupational injury and he was unable to work for a period of 3 years. He returned to work 4 years ago and has not had any recurrence of the injury since that date. Calculate Paul's statutory redundancy entitlement.

Solution 2

Statutory Redundancy Calculation

Weekly Pay	€600*
Reckonable Service	15.5 years
2 weeks' pay for each year of service	$\text{€}600 \times 2 \times 15.5 =$ €18,600

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Add 1 bonus week	<u>€600</u>
Total Statutory Redundancy	€19,200

* Based on an earnings ceiling of €600 per week

Even though Paul was absent on sick leave for 3 years, this absence is included when calculating his reckonable service for statutory redundancy purposes, as it did not occur within the last 3 years.

Employees who commence work abroad for an employer, work there for some time and are then transferred to the employer's company or an associated company in the Republic of Ireland and work here for at least 2 years before being made redundant, will have their total service (abroad and home) counted when calculating their statutory redundancy entitlements. Similarly, where an employee commences work in the Republic of Ireland, works here for some time, is then posted abroad and returns to work in Ireland before being made redundant, he will have his total service (home, abroad and home) counted when calculating his statutory redundancy entitlements.

An employer cannot issue notice of redundancy to an employee who is absent on maternity leave or on additional maternity leave. In such a case, the date of the employee's dismissal or termination of employment in a redundancy situation under the **Redundancy Payments Acts 1967 to 2022** is deemed to be the date on which the employee is expected to return to work.

Case Law: Gordon v Asahi Synthetic Fibres (Ireland) Ltd. (RP 29/98)

The Courts deemed that an employee who was absent due to illness was entitled to redundancy because notwithstanding the absence was due to illness, he was deemed to be an employee.

Case Law: Anita Olejniczak and Glenbeigh Fire and Flood Ltd – RPD197

The employee was employed by Glenbeigh Records Management Ltd from March 2009 to May 2017 at which point she accepted a position in Glenbeigh Fire and Flood Ltd. In May 2018 her position was made redundant. Her employer refused to pay redundancy on the grounds that the employee did not have to requisite service.

The employee argued that when she accepted the new position in May 2017 it was not a resignation from her previous job but a promotion within the group. There were strong ties between the companies. A single email address was used for annual leave and a single phone number.

She further argued that a reengagement took place with the agreement of the previous employer, the employee and the new employer. The new contract was void as it did not state her previous service would be counted as service with her new employer.

The employer argued that there was no redundancy as the employee did not have the requisite service. Companies will be deemed to be connected if one is a subsidiary of the other or if both are subsidiaries of a third company. The Glenbeigh Group was made up of Glenbeigh Construction which was the 100% owner of Glenbeigh Fire and Flood Ltd as well as some other companies.

Glenbeigh Records Management Ltd was owned separately and had no legal relationship with Glenbeigh Fire and Flood Ltd.

The Court found that it was clear the employee was dismissed from her employment due to redundancy. They also found that there was no evidence shown by the employee that either company were a subsidiary of each other or of a third company. As such her previous service could not be taken into account when determining whether she had the requisite service.

As she did not have the required service, the court had no jurisdiction to hear her appeal.

5.3 Compensation for loss of Reckonable Service due to Covid-19

As outlined above, any period of lay-off occurring during the 3 year period prior to redundancy is not regarded as reckonable service for redundancy purposes. However, where an employee was laid off due to the Covid-19 pandemic and was in receipt of the Pandemic Unemployment Payment (PUP) or a Jobseeker's payment during Covid-19, the **Redundancy Payments (Amendment) Act 2022** provides for a payment (**Covid-19 Related Lay-Off Payment – CRLP**) to compensate employees who are made redundant and have lost reckonable service. The Act provides for a compensatory payment of up to a maximum of €2,268 where an employee:

- Is made redundant during the period from 13th March 2020 to 31st January 2025 and is entitled to a statutory redundancy payment, and
- Was laid off at any stage during the period from 13th March 2020 to 31st January 2022 due to the Covid-19 restrictions.

The maximum amount of €2,268 is based on a maximum of 690 days lay-off and the maximum cap on weekly earnings of €600.

An employee will have to qualify for redundancy in the first instance to be eligible for this reckonable service payment. The Act provides that an employer can make the application to the Social Insurance Fund on behalf of the employee, or where the employer refuses or fails to do so, the employee can apply directly to the Department of Social Protection (DSP).

Assuming the employee is eligible, the DSP will make this CRLP payment directly to the employee.

The scheme will not impact on the employer's responsibility to pay the normal statutory redundancy payments, which excludes lay-off periods due to Covid-19 restrictions.

Note: This scheme only applies to those employees who were laid-off and in receipt of PUP or a Jobseeker's payment. Where the employer availed of the Temporary Wage Subsidy Scheme (TWSS) or the Employment Wage Subsidy Scheme (EWSS) and continued to pay their employees during the Covid-19 pandemic, this period is counted as reckonable service for calculating statutory redundancy payable by the employer.

Example 3

An employee was made redundant on 10th March 2023. He had a weekly salary of €1,000. He was laid off due to Covid-19 from 13th March 2020 until 31st January 2022 (690 days) and was in receipt of the Pandemic Unemployment Payment. Calculate his CRLP.

Redundancy date	Lay-off period (in years)	2 weeks per year of service	Weekly pay	CRLP
10/03/2023	690 days / 365 = 1.89 years	1.89 x 2 = 3.78	Capped at €600	€600 x 3.78 = €2,268

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Example 4

An employee was made redundant on 31st January 2025. He has a weekly salary of €580. He was laid off due to Covid-19 from 13th March 2020 until 31st August 2020 (171 days) and from 1st January 2021 until 31st March 2021 (89 days) and was in receipt of the Pandemic Unemployment Payment. Calculate his CRLP.

Redundancy date	Lay-off period (in years)	2 weeks per year of service	Weekly pay	CRLP
31/01/2025	260 days / 365 = 0.71 years	0.71 x 2 = 1.42	€580	€580 x 1.42 = €823.60

6. Employers' Obligations during Redundancy

The minimum period of notice which an employee is entitled to can be determined by the **Minimum Notice and Terms of Employment Acts 1973 to 2005**, or the contract of employment whichever period is the longest. An employee who has more than 2 years' continuous service is entitled to at least 2 weeks' notice of redundancy. This notice period gradually increases to 8 weeks where the employee has at least 15 years' continuous service. Employees with less than 2 years' service do not qualify for statutory redundancy.

Where an employee accepts pay in lieu of notice, the date of termination of employment for statutory redundancy purposes is deemed to be the date on which the notice period would have expired.

An employer is obliged to provide a redundancy certificate (document) to an employee when he is leaving employment and receiving his statutory lump sum payment. This document should contain the employer and employee details as well as the information used to calculate the redundancy payment (i.e. start date, date of notice of termination, leave date, weekly gross pay, breaks in service, amount (lump sum) payable, etc.). An online redundancy calculator is available on the MyWelfare website at <https://www.mywelfare.ie/redundancycalculator> which can be used by employers to calculate an employee's statutory redundancy payment. The results of this calculator can be printed and included as part of the redundancy documentation given to the employee. Employers should obtain and retain written confirmation from the employee acknowledging receipt of the payment of the lump sum. *A copy of the redundancy calculator and results are included at the end of this chapter.*

Failure to issue a redundancy certificate or to issue a false document is an offence and liable to a maximum fine of €5,000.⁵

Where an employee wishes to leave his employment prior to the notice period ending, he should give his employer a completed Form RP6 (Part 1) (*see copy at the end of this chapter*) stating the new date of leaving. The employer may give the employee counter notice by completing the Form RP6 (Part 2) requesting the employee to withdraw the RP6 (Part 1) and continue in employment until the actual date the notice period expires. If the employee unreasonably refuses to comply with the employer's request, the employer can contest liability to pay a statutory redundancy payment. Any disputes in this regard should be referred to the Workplace Relations Commission (WRC).

⁵ Section 18

If the employer agrees to the employee's request to cease employment before the proposed date of redundancy, the employer should complete Form RP6 (Part 3) by altering the proposed date of redundancy and replacing it with the new date of leaving.

A covered employee who is being made redundant is entitled to a reasonable amount of paid time off work, during the 2 weeks prior to the date of redundancy, to look for a new job or make arrangements for training or further work.

7. Short Time and Lay Off

An employee may be able to claim redundancy without being dismissed if his employer puts him on temporary "short-time" or "lay-off", due to lack of work. Short-time is where the employee earns less than half of his normal weekly wages or works less than half of his normal weekly hours. Lay-off is where the employee does not work at all as there is no work available. An employer must notify an employee of the temporary short-time or lay-off. Part A of the Form RP9 (*see copy at the end of this chapter*) may be used for this purpose.

Where the period of short-time or lay-off exceeds 4 consecutive weeks or any 6 broken weeks in a 13 week period, the employee is entitled to claim redundancy, including during the 4 week period after the lay-off or short-time ends. Part B of the Form RP9 may be used by the employee to notify his employer of his intention to claim a redundancy payment. The employer has 7 days to either accept the employee's claim or give the employee counter notice. Where the employer does not give counter notice, the employer is assumed to have accepted the claim. Where the claim is accepted the employer should pay the employee's statutory redundancy entitlement.

The employer can contest any liability to pay statutory redundancy by giving the employee counter notice. The employer can do this where he has reasonable grounds to expect that he can provide the employee with a minimum of 13 weeks' continuous employment (without lay-off or short-time) which will commence within 4 weeks of the date the employee submitted his claim for redundancy. Part C of the RP9 may be used by the employer to give counter notice.

Where an employee is put on temporary short-time or temporary lay-off, holiday and public holiday entitlements are calculated based on the temporary working hours.

When calculating a redundancy payment for an employee on temporary lay-off, any period of lay-off within the last 3 years is not included as reckonable service when calculating the length of service. In contrast periods of short-time are fully reckonable. Where an employee has been put on short-time, his normal weekly earnings for redundancy purposes is based on a full week's pay and not on the reduced wages earned while on short-time.

An employee who claims and receives a statutory redundancy payment due to lay off or short-time is deemed to have voluntarily left his employment and therefore is not entitled to notice under the **Minimum Notice and Terms of Employment Acts 1973 to 2005**.

During the period of the Covid-19 Pandemic from 13th March 2020 to 30th September 2021, employees were prohibited from claiming redundancy due to lay-off or short-time. This prohibition was put in place to protect employers at a time when numerous businesses were forced to close or reduce their business operations because of Covid-19.

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7.1 Reduced Hours

If an employee's hours of work are reduced by his employer but the employee continues to work more than half of his original weekly hours (e.g. reduced from a 5 day week to a 3 day or 4 day week), the gross weekly wage for statutory redundancy purposes is calculated based on a full week's pay provided the employee was put on reduced hours less than 1 year before being made redundant.

Where a redundancy situation arises for an employee who has been on reduced hours for more than 1 year and the employee fully accepted the reduced working hours as being his normal working week and never sought to return to full time working hours, the gross wage calculation of a redundancy lump sum is calculated based on the reduced working hours.

However, where the employee never accepted the reduced working hours as being his normal working week and constantly sought to return to full time working hours, the gross wage calculation of a redundancy lump sum should be calculated based on a full week's pay.

Where an employee requests to be put on reduced hours or to go job-sharing and the employer agrees, any redundancy payment must be based on the reduced hours.

7.2 Seasonal Workers

Where a seasonal worker is laid-off for an average period of more than 12 weeks per year, a redundancy situation will not arise until the usual commencement time of his seasonal work. If the employee is not then re-employed, a redundancy situation may arise, but not until then.

8. Employers' Failure to pay Redundancy

Employers are obliged to make statutory redundancy payments in accordance with the **Redundancy Payments Acts 1967 to 2022** on the date of termination of employment. Where an employer refuses, fails or is unable to pay an employee a statutory redundancy payment, the employee can apply for payment from the Social Insurance Fund.

Where an employer refuses to acknowledge that a redundancy has occurred (e.g. where an employee has been dismissed on grounds which constitute redundancy) or fails to pay the redundancy lump sum or the correct amount of the redundancy lump sum, the employee is required to give the employer a completed Form RP77 (*see copy at the end of this chapter*) which is an application for a redundancy payment.

8.1 Employer Unable to Pay

If the employer is unable to pay an employee's redundancy lump sum, they should follow the steps below:

- (a) Log on to the Welfare Partners service <https://www.welfarepartners.ie/Account/Login>
To access the service, the employer will need a Department of Social Protection Sub-Cert from Revenue
<https://www.gov.ie/pdf/?file=https://assets.gov.ie/47927/f43d3c26566e4fa8992b20100560895a.pdf#page=null>
- (b) Complete and submit an online application form (previously the RP50 form).
- (c) Download the completed Employee Declaration Form and send it to the employee by either email or post.
- (d) Upload confirmation from the employee that the Employee Declaration Form is correct.
This should be a physical or digital signature or an email from the employee confirming the information is correct.

- (e) Upload the ‘Required’ documents and ‘Optional’ documents. The required documents include a Statement of Affairs which details the assets and liabilities of the employer and shows that the employer is unable to pay the redundancy lump sum, and if applicable, details of any transfer of undertakings from one employer to another.
- (f) Review the declaration in the ‘Application summary’ and ‘Submit application’.

Further information on how employers can access Welfare Partners and use this service is available in the Redundancy Payments Scheme on Welfare Partners - Employer Guide – which is available at: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/139503/2e29286e-7528-48a2-9789-2f063317c4ce.pdf#page=null>

Where a company has been liquidated or is in receivership, the liquidator or receiver should complete and submit an online application on behalf of the employees. They do this using the Welfare Partners service. This process is outlined in detail in the Redundancy and Insolvency Payments Scheme on Welfare Partners – Employer Representative Guide - which is available at: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/139502/ffe1cd53-c2c8-43e4-a387-264ddc90f230.pdf#page=null>

8.2 Employer Refuses to Pay

Where an employer refuses to pay an employee’s redundancy lump sum or if there is a dispute about redundancy, the employee can bring a claim to the Workplace Relations Commission (WRC). The employee should:

- (a) Complete and submit the online complaint form available on workplacerelations.ie within 1 year of his dismissal.
- (b) If the WRC make an award, the employee should apply to the DSP for his lump sum by emailing redundancypayments@welfare.ie to request an RP50 application form.
- (c) Complete the RP50 form and sign it.
- (d) Send the signed RP50 form to the Redundancy and Insolvency Section of the DSP along with a copy of the WRC decision within 52 weeks of the decision being made.

The **Social Welfare and Pensions Act 2014** states that where the DSP have made a redundancy payment on behalf of an employer, and the employer is entitled to a refund of employer PRSI contributions, the DSP will recover the redundancy payment from the PRSI refund.

9. Complaints Procedure

Disputes concerning redundancy payments can be submitted to the WRC for determination. Such claims must be submitted to the WRC within 52 weeks of the date of dismissal or termination of employment. This period can be extended to 104 weeks if there was reasonable cause for the delay.

Further information regarding the complaints process is dealt with in the chapter entitled “Introduction to Employment Law”.

An employee cannot be paid both a redundancy lump sum and compensation for unfair dismissal on foot of taking a case to the WRC. An employee is either made redundant or is dismissed. In a redundancy situation, the actual job disappears due to total closure, liquidation, rationalisation, etc. In a dismissal situation, an employee is asked to leave, whether fairly or unfairly, and is replaced by another person doing exactly the same job.

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10. Non-Statutory Payments

The **Redundancy Payments Acts 1967 to 2022** do not deal with redundancy payments in excess of the statutory minimum. An employer is free to make larger payments to an employee than the Acts require and it is not unusual for an employer to offer to pay employees a payment in excess of the statutory redundancy payment in order to encourage them to accept the redundancy. This often happens with a voluntary redundancy, where the employer puts a redundancy package in place and looks for employees to accept the terms on a voluntary basis.

11. Collective Redundancy

A collective redundancy can occur where an employer makes a number of people redundant. This is detailed in the chapter entitled **Protection of Employment Acts 1977 to 2014**.

12. Transfer of Undertakings

The **European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations 2003**, applies where ownership of a business is transferred from one employer to another. In this situation, the statutory rights of the employee to notice, redundancy and unfair dismissal, as well as his contractual rights, are preserved on transfer to the new business i.e. where the previous owner terminates the contract of employment of the employee, and the new owners offer renewal or re-engagement, or other suitable alternative employment.

An employer is obliged to inform employees (or an employee representative such as a trade union) of the following information at least 30 days prior to the transfer occurring:

- The date or proposed date of the transfer,
- The reason for the transfer,
- The legal implications of the transfer for the employee and a summary of any relevant economic and social implications of the transfer for them, and
- Any other measures envisaged in relation to the employees.

The transfer of an undertaking does not in itself constitute grounds for dismissal. However, there is nothing in the regulations which prohibit dismissal for economic, technical or organisation reasons entailing changes in the work force through **Redundancy Payments Acts 1967 to 2022** and the **Protection of Employees (Employers' Insolvency) Acts 1984 to 2019**.

If an employment contract is terminated because a transfer involves a substantial change in working conditions to the detriment of the employee, the employer is regarded as having been responsible for termination of the employment.

Case Law: Unite v Dublin City University (DCU)

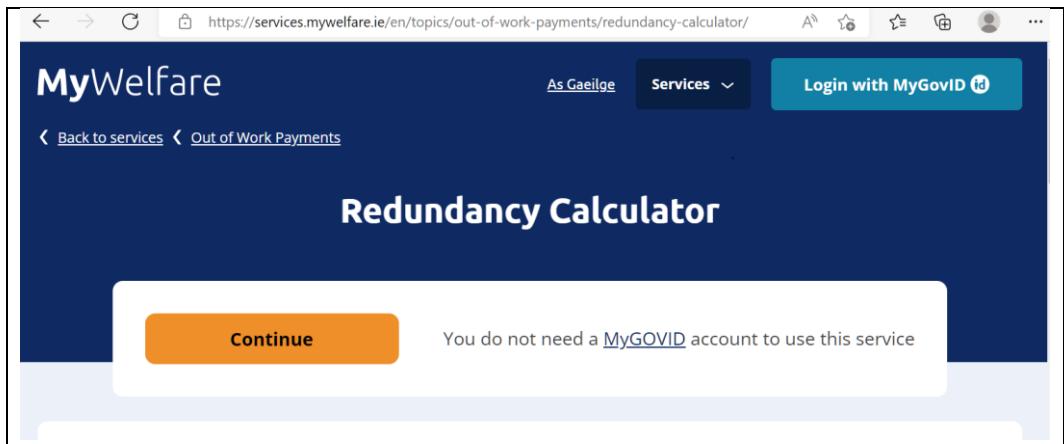
This case concerned a claim in respect of a 20% shift allowance for two porters employed at St. Patrick's College since 2003 and 2009 respectively. The College became part of DCU on 1st October 2016, at which point the porter's employment transferred to DCU as a result of a transfer of undertakings. The porters were seeking to work a similar shift pattern to that which their counterparts employed by the University have worked for many years and to be placed on the appropriate pay scale.

As the dispute predates the transfer of undertakings, it does not come within the scope of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (TUPE Regulations). The TUPE Regulations protect an employee's existing contractual

entitlements following the transfer of a business, however in this case the porters were seeking to have the shift allowance back dated to the date they commenced employment with St. Patricks College.

Having considered the parties' written and oral submissions, the Labour Court recommended that the porters be placed on the appropriate point(s) of DCU's pay scale which is inclusive of the 20% shift allowance referred to above, with effect from 1st October 2016.

Redundancy Calculator



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Personal Details

Please provide your date of birth Please note, you must be over the age of 16 in order to return a calculation for this service

Date of birth

DD

MM

YYYY

Employment Details

What date did you start working in this job?

Start date

DD

MM

YYYY

What date did you receive a notice of termination for this job?

Date of notice

DD

MM

YYYY

What date did you finish working in this job?

End date

DD

MM

YYYY

How many hours did you work per week in this job?

Hours per week

What was your Gross weekly wage in this job?

This is the total amount you earned per week before tax or any other deduction

Gross Weekly wage

 €

Breaks in Service

Do you have any breaks in service during the final three years of your employment?

Yes

No

Do you want to provide your own reference to appear on your calculation?

This could be useful if you are an employer completing this on behalf of employees

Yes

No

Calculate

Redundancy Calculator Results

Calculation

Our calculations estimate your statutory redundancy entitlement would be:

€16,800.00

Calculation of statutory redundancy

Employment start date	1/1/2010
Employment end date	30/6/2023
Years	13.5
Days	196
Number of years service	13.5
Bonus week	1
Total weeks	28
Statutory entitlement	28 X €600.00 = €16,800.00

(Weeks multiplied by Gross weekly Wage. Gross weekly wage capped at €600)

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CHAPTER 53



An Roinn Fiontar, Tríobála agus Nuataleachta
Department of Enterprise, Trade and Innovation

Redundancy Payments Acts 1967 – 2007

RP9

LAY OFF AND SHORT TIME PROCEDURES

NOTES

An employer may use Part A overleaf of this form to notify an employee of temporary lay off or temporary short time (lay off and short time are defined at the end of this page).

An employee may use Part B overleaf of this form to notify his/her employer of intention to claim a redundancy lump sum payment in a lay off or short time situation.

An employer may use Part C overleaf of this form to give counter notice to an employee who claims payment of a redundancy lump sum in a lay off/short time situation.

EMPLOYER'S PAYE REGISTERED NUMBER <table border="1"><tr><td>Figures</td><td>Letter</td></tr></table>	Figures	Letter	ADDRESS OF EMPLOYEE <hr/> <hr/> <hr/>			
Figures	Letter					
BUSINESS NAME AND ADDRESS OF EMPLOYER <hr/> <hr/>	SEX (TICK APPROPRIATE BOX) <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE					
DESCRIPTION OF BUSINESS IN WHICH REDUNDANCY ARISES	DATE OF BIRTH OF EMPLOYEE <table border="1"><tr><td>Day</td><td>Month</td><td>Year</td></tr></table>	Day	Month	Year		
Day	Month	Year				
EMPLOYEE'S PERSONAL PUBLIC SERVICE NUMBER (P.P.S.) NUMBER <table border="1"><tr><td>Figures</td><td>Letter(s)</td></tr></table>	Figures	Letter(s)	DATE OF COMMENCEMENT OF EMPLOYEE'S EMPLOYMENT <table border="1"><tr><td>Day</td><td>Month</td><td>Year</td></tr></table>	Day	Month	Year
Figures	Letter(s)					
Day	Month	Year				
EMPLOYEE'S SURNAME	ADDRESS OF PLACE OF EMPLOYMENT <hr/> <hr/>					
EMPLOYEE'S FIRST NAME						

DEFINITION OF LAY OFF AND SHORT TIME

A lay off situation exists when an employer suspends an employee's employment because there is no work available, when the employer expects the cessation of work to be temporary and when the employer notifies the employee to this effect.

A short time working situation exists when an employer, because he/she has less work available for an employee than is normal, reduces that employee's earnings to less than half the normal week's earnings or reduces the number of hours of work to less than half the normal weekly hours, when the employer expects this reduction to be temporary and when the employer notifies the employee to this effect.



Redundancy Payments Acts 1967 – 2007

RP9

PART A:

Notification to employee of TEMPORARY LAY OFF or TEMPORARY SHORT TIME

Notification in respect of this part need not be in writing

It is necessary to place you on TEMPORARY LAY OFF TEMPORARY SHORT TIME
(Tick Appropriate Box)

as and from

--	--	--	--	--	--

Day Month Year

by reason of _____

I expect the LAY OFF/SHORT TIME to be temporary.

Signature of Employer _____ Date: _____

PART B:

Notice of Intention to claim Redundancy Lump Sum Payment in a LAY OFF/ SHORT TIME situation

An employee who wishes to claim a redundancy lump sum because of lay off/short time must serve notice of intention to claim in writing within four weeks after lay off/short time ceases. In order to become entitled to claim a redundancy lump sum on foot of a period of lay off, short time or a mixture of both, that period must be at least four consecutive weeks or a broken series of six weeks where all six fall within a thirteen-week period. An employee who wishes to terminate his/her contract of employment by reason of lay off or short time must give his/her employer the notice required by his/her contract or if none is required, at least one week's notice.

An employee who claims and receives a redundancy payment in respect of lay off or short time is deemed to have voluntarily left his/her employment and therefore not entitled to notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

To (Business Name of Employer):_____

I give you notice of my intention to claim a redundancy lump sum in respect of

LAY OFF/SHORT TIME (delete whichever does not apply)

From

To

--	--	--	--	--	--

Day Month Year

--	--	--	--	--	--

Day Month Year

Signature of Employee _____ Date: _____

PART C:

Counter Notice to Employee's Notice of Intention to claim a Redundancy Lump Sum

Notification in respect of this part must be in writing and must be given to the employee within seven days of service of the employee's notice.

I contest any liability to pay you a Redundancy Lump Sum on the grounds that it is reasonable to expect that within four weeks of the date of service of your notice, namely,

--	--	--	--	--	--

Day Month Year

(Date of Service)

you will enter upon a period of employment of not less than thirteen weeks during which you will not be on lay off or short time any week.

Signature of Employer _____ Date: _____

CHAPTER 53



Ais Roimh Fiantas Trádála agus Nudaleachta
Department of Enterprise, Trade and Innovation

Redundancy Payments Acts 1967 – 2007

RP6

(Obligatory Period)

LEAVING BEFORE REDUNDANCY NOTICE EXPIRES

It may be that when you receive Form RP50 (Part A) – Notice of proposed dismissal for Redundancy – you might wish to leave your employment sooner than the date of termination notified to you, e.g., to take up alternative employment. If you decide to leave, there is a risk that you may lose any entitlement to redundancy payments unless you notify your employer in writing and also comply with the general conditions on the back of this form. You may use this form for writing to your employer.

If after receipt of this notice your employer objects to your leaving your employment and you leave notwithstanding, you may have to prove to the satisfaction of the Employment Appeals Tribunal that your grounds for leaving were reasonable.

PART 1:

NOTICE TO AN EMPLOYER BY AN EMPLOYEE TO TERMINATE EMPLOYMENT (SECTION 10 OF THE REDUNDANCY PAYMENTS ACT, 1967 AS AMENDED BY SECTION 9 OF THE REDUNDANCY PAYMENTS ACT, 1979)

To.....

(Name and Address of Employer)

With reference to your Notice of Redundancy dated..... proposing to terminate my employment on.....(date of termination notified), I hereby give you notice of my intention to anticipate dismissal by leaving on.....(insert date on which you propose to leave). (Note that the date on which you give this notice and the date on which it expires must be within the obligatory period of notice. Your employer's consent may be necessary to ensure this, see Part 3 of this form).

Personal Public Service No:.....

Signed.....(Employee)
Date.....

PART 2: COUNTER-NOTICE BY EMPLOYER

To.....

(Name of Employee)

I request you to withdraw your notice and to continue in my employment until the date on which my notice expires. If you do not withdraw your notice I will contest my liability to pay you a redundancy payment.

My reason for objection is.....

Signed.....
(Employer)
Date.....

PART 3: CONSENT BY EMPLOYER TO ALTER DATE OF HIS/HER DISMISSAL NOTICE SO AS TO BRING EMPLOYEE'S ANTICIPATORY NOTICE WITHIN THE OBLIGATORY PERIOD. (SECTION 9 OF THE REDUNDANCY PAYMENTS ACT 1979)

I agree that the date of termination notified on my notice of proposed dismissal be altered to..... so that the giving of employee's notice to anticipate dismissal and the expiration date of his/her anticipating notice shall be within the obligatory period of notice.

Signed.....
(Employer)
Date.....

Issued by the Department of Enterprise, Trade and Innovation.



Redundancy Payments Acts 1967 – 2007

RP6

EMPLOYEES PROPOSING TO ANTICIPATE THEIR REDUNDANCY NOTICE BY LEAVING SOONER THAN THE DATE OF TERMINATION NOTIFIED TO THEM ON FORM RP50 SHOULD READ THESE NOTES CAREFULLY BEFORE COMPLETING THE FORM OVERLEAF. (This is not a statutory form and it is open to you to use an alternative means of communication with your employer, provided it is in writing).

If you have been given Notice of proposed dismissal for Redundancy and you wish to leave your job sooner than the date you are to become redundant (as set out on the redundancy notice) you should, if you want to preserve your entitlement to redundancy payment, fill in form overleaf and send it or give it to your employer.

This must be done within (not before) your obligatory period of notice. Normally this period is the two weeks immediately before the date you are to become redundant but if you have been in the job for between 5 and 10 years, this period is extended to 4 weeks; if you have been in the job 10 to 15 years the period is 6 weeks and if you have been in the job more than 15 years the period is 8 weeks. If your contract of employment lays down a longer period of notice, this longer period is the obligatory period of notice in your case.

You may leave your job before the date specified in your redundancy notice and still preserve your redundancy entitlement only if the dates on which you give notice and on which you leave are within your obligatory period of notice as set out in the previous paragraph. Furthermore if your employer gives you a counter-notice in form similar to the 'counter-notice by employer' overleaf you will not be entitled to redundancy payment if you unreasonably refuse to comply with his request. (Any dispute on this matter may be referred to the Employment Appeals Tribunal).

If the date on which you wish to give notice is outside the obligatory period your employer may bring it within that period by agreement in writing to an alteration of the date of termination shown on his/her notice of dismissal (RP50 Part A) Part 1 of this form may be used for this purpose. You should obtain written agreement to alteration of termination date on employer's notice prior to giving your anticipation notice, and if your employer refuses to agree to such alteration you must wait until a date within the obligatory period before giving anticipatory notice.

NOTE FOR EMPLOYERS

If an employee under notice of redundancy leaves by his/her own decision before the date set out in his/her notice without complying with all of the conditions set out above, he/she may not be entitled to a lump sum under the Redundancy Payments Acts. Should you pay an employee a lump sum to which he/she is not entitled because he/she has not complied with the procedures outlined on this form, you will not get a rebate from the Department of Enterprise, Trade and Innovation unless the Employment Appeals Tribunal decides otherwise.

If you agree to an employee leaving before the date set out in his/her notice of redundancy, though within his/her obligatory period of notice, you must attach completed form RP6, or whatever written notice you have received from him/her, to your claim for rebate, as evidence of compliance with these procedures, otherwise your claim may be refused.

If the date on which an employee wishes to give you anticipatory notice is outside the obligatory period you may (though you are not obliged to) bring it within such period by alteration of the termination date on your dismissal notice. Your agreement to do so must be in writing. Part 3 of this form may be used for this purpose.

If you do not agree to your employee's leaving before the date set out in his/her notice of redundancy, though within his/her obligatory period of notice, you should, before the expiration date of his/her anticipatory notice give him/her counter-notice in writing. Part 2 of this form may be used for that purpose.

The redundancy lump sum will be based on the period: date on which service commenced to date of actual termination.



EXPLANATORY NOTE FOR EMPLOYEE WHEN APPLYING TO AN EMPLOYER FOR A LUMP SUM

This form may be used by an employee

- A. who considers that he/she is entitled to a redundancy payment and his/her employer has not acknowledged his/her entitlement by giving him/her
 - (i) Notice of proposed dismissal for Redundancy (Form RP50 Part (A))
 - (ii) Part (B) of Form RP50
 - (iii) Lump Sum Claim Declaration

If an employee has received (i) and (ii), or (ii) only but not (iii), he/she should apply in writing to his employer for payment.

- B. who considers that he/she has received an incorrect lump sum
- C. who has received a favourable decision from the Employment Appeals Tribunal on his/her redundancy appeal and who wishes to pursue the matter of payment of the lump sum, or an unpaid part of it, with his/her employer's representative.

Should a payment or a balance of payment be refused or this application be ignored by an employer, the following options are open to the employee:

If he/she has not received Part (B) of Form RP50: he/she may apply to the Employment Appeals Tribunal for a declaration of redundancy or a declaration of the facts of redundancy. Form T1 A* should be consulted and used for this purpose.

If he/she holds a completed RP50 or alternatively has received a favourable decision from the Employment Appeals Tribunal on his/her redundancy appeal: he/she may refer the matter to the Department of Enterprise, Trade and Innovation, Davitt House, 65A Adelaide Road, Dublin 2, for further attention. Lump Sum Claim Declaration should be completed for this purpose.

IMPORTANT

1. Record the date on which you apply for payment to your employer
2. Allow a reasonable time, say 14 days, for the employer to deal with the matter before proceeding further.
3. Do not use this Form for purposes other than applying to an employer for payment of a statutory Redundancy lump sum or balance of a lump sum
4. If dismissal arises in a lay-off or short-time situation consult Form RP9* in the first instance.

NOTE FOR EMPLOYERS AND EMPLOYEES

The following informational booklets in particular on the Redundancy Payments Scheme may be of interest in connection with disputes.

Guide to the Redundancy Payments Scheme.

Explanatory Leaflet on the Employment Appeals Tribunal.

* Available from the Department of Enterprise, Trade & Innovation.



REDUNDANCY PAYMENS ACTS, 1967 TO 2007

A claim by an employee against an employer for a lump sum or part of a lump sum.

An employee who is in doubt about whether he/she has a valid claim or not can check against an informational leaflet on the qualifications – (see the footnote overleaf).

To:.....

.....

(Name and Address of Employer)

I claim a lump sum payment/balance of lump sum payment* from you in respect of my dismissal. My claim is based on the following grounds (tick whichever applies):

The grounds of my dismissal constitute redundancy but I have not received Redundancy Form RP50 nor a lump sum payment.
I request these.

I have received a Redundancy Form RP50 but no lump sum payment.

The lump sum, which I received, is incorrect. Particulars of the error are:

I have received a favourable decision from the Employment Appeals Tribunal in regards to my redundancy appeal and I now request you to pay the lump sum due to me.

PPS No:..... Signed:.....

Date:..... Address:.....

CHAPTER 54

Protection of Employment Acts 1977 to 2014

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Definition of Collective Redundancy**
 - 4. Obligation on Employer to Consult with Employees' Representatives**
 - 5. Fixed Payment Notice**
 - 6. Obligation on Employer to Notify Minister**
 - 7. Employee's Rights**
 - 8. Records**
 - 9. Redress Provisions**
 - 10. Offences**
-

1. Main Provisions

The **Protection of Employment Acts 1977 to 2014** impose a statutory obligation on employers to:

- consult with employees' representatives where an employer proposes to create collective redundancies,¹ and
- notify the Minister for Enterprise, Trade and Employment in writing of his intention to create collective redundancies,²

at least 30 days in advance of the first dismissal. An employer is prohibited from issuing any notice of redundancy during the mandatory 30 day consultation period and until 30 days have elapsed from the date on which the Minister was notified. Both periods may run concurrently.

The purpose of this law is to provide increased protection to groups of employees in a collective redundancy.

Employees' Representative is defined as:

- A trade union, staff association or body with which it has been the practice of the employer to conduct collective bargaining negotiations, or
- In the absence of such a trade union or staff association, an employee or employees chosen (under an arrangement put in place by the employer) to represent them in negotiations with the employer.

¹ Section 9

² Section 12

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2. Covered Employees

This Acts apply to all employees working under a contract of employment with an employer who normally employs more than 20 people. With regard to an agency worker, the person who is liable to pay the wages of the employee is deemed to be the employer for the purpose of this Act.

The Acts do not apply to:

- The non-renewal of fixed-term or specific purpose contracts provided that the contract ended only because of the expiry of that contract or the completion of the specific purpose.
- State employees other than designated industrial grades
- Officers of a Local Authority

3. Definition of Collective Redundancy

A collective redundancy is where a set number of employees are dismissed in a consecutive 30 day period for one or more reasons not related to the individual concerned i.e. where the dismissals are occurring by reason of redundancy as outlined in the **Redundancy Payments Acts 1967 to 2022**.

A redundancy is collective if the number of dismissals is at least:

- (a) 5 in a workplace normally employing 21 to 49 employees.
- (b) 10 in a workplace normally employing 50 to 99 employees.
- (c) 10% of the number of employees in a workplace normally employing 100 to 299 employees.
- (d) 30 in a workplace normally employing 300 or more employees.

These numbers apply regardless of whether or not the employee being dismissed is entitled to a statutory redundancy payment. Voluntary redundancies are subject to the collective redundancy rules.

When calculating the number of redundancies where the number of dismissals is at least 10 in a workplace normally employing more than 20 and less than 100 employees, any terminations of employment contracts of individual employees will be aggregated with any redundancies provided there are at least 5 redundancies.

The number of employees normally employed in the workplace should be calculated as the average of the number of employees employed in each of the 12 months preceding the date on the first dismissal takes effect.³ Hence if an employer tried to reduce his workforce below the threshold to avoid a collective redundancy occurring, he may still be caught by the Act as it looks at the average number of employees over the 12 month period prior to the first dismissal taking effect, not the number who were employed immediately prior to the dismissal taking effect.

4. Obligation on Employer to Consult with Employees' Representatives

An employer is required to engage in a consultation process with employees' representatives with a view to reaching an agreement, to include discussions on matters such as:⁴

- The possibility of avoiding the proposed redundancies,
- Reducing the number of employees affected,

³ Section 6

⁴ Section 9

- Limiting the consequences of the redundancies with regard to social measures which could assist in the retraining or redeployment of employees being made redundant, and

As part of the consultation process, an employer must provide the following information in writing to the employees' representatives:⁵

- The reasons for the proposed redundancies
- The number and categories of employees whom it is proposed to make redundant
- The number and categories of employees normally employed
- The period over which it is proposed to implement the redundancies
- The criteria for the selection of workers to be made redundant
- If there is to be a payment other than the statutory redundancy payment, the method of calculating such other payment must be set out.

The consultation process should commence at the earliest opportunity but at least 30 days before the first notice of dismissal is given.

5. Fixed Payment Notice

A Fixed Payment Notice (fine) of €2,000 can be issued to employers who fail to initiate consultations with employees' representatives or supply the representatives with the relevant information as outlined above.⁶ Fixed Payment Notices are dealt with in more detail in the chapter entitled Introduction to Employment Law.

6. Obligation on Employer to Notify Minister

An employer who proposes to create collective redundancies must notify the Minister for Enterprise, Trade and Employment in writing of his proposal at the earliest opportunity which must be at least 30 days before the first dismissal takes effect.⁷

The employer is required to provide the Minister with copies of the information provided to the employees' representatives. In addition to the information outlined in section 4 above, the notification should include:

- The name and address of the employer,
- The nature of the employer (i.e. a company, partnership or sole trader)
- The address where the collective redundancies are proposed
- The names and addresses of the employees' representatives (trade union, etc.) representing the employees affected by the proposed redundancies.
- The details of each consultation (commencement date, progress made, etc.)

A copy of the notification to the Minister should be provided by the employer as soon as possible to the employees' representatives who may forward any observations they have in relation to the notification to the Minister.

Where collective redundancies arise from the termination of an employer's business following bankruptcy or winding up proceedings or for any other reason as a result of a decision of a court,

⁵ Section 10

⁶ Workplace Relations Act 2015 (Fixed Payment Notice) Regulations 2015

⁷ Section 12

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the employer, or the insolvency practitioner, is not required to notify the Minister of the collective redundancies, unless requested by the Minister.

Where the proposal to create collective redundancies relates to the crew of a seagoing vessel, the employer must notify the Minister where the vessel is registered in Ireland; and where the vessel is registered abroad, the employer must notify the relevant authority of the relevant State.

7. Employee's Rights

Nothing in this Act affects an employee's right to a period of notice or to any other entitlement under any other Act or under his contract of employment. For example, employees are entitled to:

- A notice period as provided for in the **Minimum Notice and Terms of Employment Acts 1973 to 2005**, or as outlined in their contract of employment, if longer,
- Statutory redundancy,
- Compensation for accrued holiday pay,
- National minimum wage or arrears of pay, etc.

Where the employer is insolvent and unable to pay the amounts due, the employee is entitled to compensation under the Redundancy Payments Scheme and the Insolvency Payments as appropriate. These entitlements are outlined the chapters entitled **Redundancy Payments Acts 1967 to 2022** and **Protection of Employees (Employers' Insolvency) Acts 1984 to 2019**.

The **Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007** provides for the establishment of a Redundancy Panel to determine whether the redundancies were (or are being) carried out in order to replace the employees with workers on lower pay or other less favourable terms and conditions. These are known as exceptional collective redundancies. If the Redundancy Panel believes that that the redundancy is an exceptional collective redundancy, it will request the Minister to refer the matter to the Labour Court for final determination. Where the redundancy is determined by the Labour Court to be an exceptional collective redundancy, enhanced compensation of up to 260 weeks' pay (depending on the length of the employee's service) will be payable to each of the affected employees.

8. Records

Employers are required to keep records for a period of at least 3 years which show that the provisions of the Act have been complied with. The onus is on the employer to prove that he has complied with the Act.

9. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled "Introduction to Employment Law". An employee, or a trade union or staff association may present a case to the WRC for determination.

Where a complaint is upheld, an Adjudication Officer may:

- Declare that the complaint was or was not well founded,
- Require the employer to take a specified course of action to comply with the relevant provisions of the Act,
- Require the employer to pay compensation that is just and fair having regard to all the circumstances not exceeding 4 weeks remuneration.

A decision of an Adjudication Officer from the WRC can be appealed to the Labour Court who can affirm, vary or set aside the decision of the Adjudication Officer.

10. Offences

An employer who fails to:

- Initiate consultation with employees' representatives,
- Supply the employee representatives with all the relevant information,
- Notify the Minister of proposed redundancies at least 30 days in advance of the first dismissal taking effect, or
- Keep records to show that the Act is being complied with,

will be guilty of an offence and liable on summary conviction to a fine not exceeding €5,000.

Where collective redundancies are effected before the expiry of the 30 day notification period to the Minister, the employer shall be liable on summary conviction on indictment to a fine not exceeding €250,000.⁸

⁸ Section 14

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Protection of Employees (Employers' Insolvency) Acts 1984 to 2019

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Insolvency**
 - 4. Entitlements covered by the Acts**
 - 5. Calculation of Normal Weekly Earnings**
 - 6. Application for Entitlements under the Acts**
 - 7. Redress Provisions**
 - 8. Offences**
-

1. Main Provisions

The **Protection of Employees (Employers' Insolvency) Acts 1984 to 2019** protects certain outstanding entitlements relating to the pay of employees in the event of their employment being terminated due to their employer becoming insolvent. These include arrears of pay, holiday pay, pay in lieu of statutory notice, and other entitlements. Certain contributions to occupational pension schemes or PRSAs are also covered.

Payments due to employees arising from claims under these Acts are made from the Social Insurance Fund via the Insolvency Payments Scheme operated by the Department of Social Protection (DSP). A claim under this Act may be made in addition to a claim for a statutory redundancy payment under the **Redundancy Payments Acts 1967 to 2022**.

2. Covered Employees

The Acts cover employees and apprentices who are 16 years of age or over and who are insurable for all social insurance benefits (i.e. PRSI Class A contributors). It also includes:

- Employees aged 66 years or over (insurable at PRSI Class J), who except for their age, would be insurable at PRSI Class A, and
- Those employed in excepted employments (non-insurable employments) under the Social Welfare legislation. This includes employments of a casual nature otherwise than for the purpose of the employer's trade or business or clubs, subsidiary employments and employments of inconsiderable extent (i.e. where an employee's total earnings from all employments do not exceed €38 per week).

3. Insolvency

Insolvency generally arises for a business when it is unable to meet its debts as they fall due. For the purposes of the Insolvency Payments Scheme, a business is insolvent if any one of the following criteria is satisfied,¹ and date of insolvency is outlined as follows:

¹ Section 4

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Event	Date of Insolvency
The business is in liquidation	The date the Liquidator is appointed
The business is in receivership	The date the Receiver is appointed
The employer is legally bankrupt	The date he is adjudicated bankrupt
The employer has died and the estate is insolvent and being administered under the relevant legislation	The date of death of the employer
The employer is insolvent under the legislation of another EU Member State	The date on which the insolvency is established under the legislation of the EU Member State concerned

4. Entitlements covered by the Acts

Subject to certain limits and conditions, an employee is entitled to the following under the Acts:²

1. Any arrears of wages arising in the preceding 18 months subject to a maximum of 8 weeks' pay and a maximum normal weekly earnings figure of €600 per week.
2. Holiday pay arising in the preceding 18 months subject to a maximum of 8 weeks' pay and a maximum normal weekly earnings figure of €600 per week.
3. Arrears of sick pay due under an occupational sick pay scheme arising in the preceding 18 months subject to a maximum of 8 weeks' pay. This payment is restricted to the difference between normal weekly earnings (subject to a maximum of €600 per week), less any Illness or Injury Benefit payable by the Department of Social Protection.
4. Deductions such as union dues, health insurance, life insurance, etc. which were made from the employee's wages by agreement, but not paid to the relevant body.
5. Pay in lieu of statutory notice entitlement set out in the **Minimum Notice and Terms of Employment Act 1973 to 2005**, or payment of an award by the Workplace Relations Commission under the Act.
6. An amount which an employer is required to pay by order of the Labour Court under a Registered Employment Agreement, or in respect of proceedings which have been instigated against the employer.
7. An amount which an employer is required to pay under a Sectoral Employment Order where proceedings have been instigated against the employer.
8. Certain arrears of pension or PRSA contributions not paid into the pension scheme or PRSA. The Insolvency Payments Scheme covers the lesser of the following pensions or PRSA contributions:
 - a. The balance of any unpaid employee or employer pension contributions in respect of the preceding 12 months, or
 - b. The amount certified by an actuary required to meet the liabilities of the scheme on its dissolution.

With regard to employee pension or PRSA contributions, payment can only be made under the Insolvency Payments Scheme where the amount was deducted from the employee's pay by the employer but was not paid into the pension scheme.

9. An amount which an employer is required to pay under a determination, decision, order, award, recommendation or mediated settlement (as appropriate) under the following legislation:

² Section 6

Protection of Employees (Employers' Insolvency) Acts 1984 to 2019

- Unfair Dismissals Acts 1977 to 2015 or damages at common law for wrongful dismissal. This is subject to a maximum of 104 weeks wages.
- Employment Equality Acts 1998 to 2015,
- Maternity Protection Acts 1994 to 2022,
- Paternity Leave and Benefit Act 2016,
- Adoptive Leave Acts 1995 and 2005,
- Parental Leave Acts 1998 to 2019,
- Parent's Leave and Benefit Act 2019,
- National Minimum Wage Acts 2000 and 2015 – Where an employer in financial difficulty was granted a temporary exemption by the Labour Court from paying the national minimum wage to an experienced adult worker and subsequently becomes insolvent, compensation from the Insolvency Payments Scheme will be based on the prevailing national minimum wage.
- Carer's Leave Act 2001,
- Payment of Wages Act 1991,
- Terms of Employment (Information) Act 1994 to 2014,
- Protection of Young Persons (Employment) Act 1996,
- Organisation of Working Time Act 1997,
- Protection for Persons Reporting Child Abuse Act 1998,
- European Communities (Protection of Employment) Regulations 2000,
- Protection of Employees (Part-Time Work) Act 2001,
- Competition Acts 2002 to 2017
- Protection of Employees (Fixed-Term Work) Act 2003,
- European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003,
- Industrial Relations (Miscellaneous Provisions) Act 2004 – award by an Adjudication Officer concerning victimisation of an employee,
- Employment Permits Acts 2003 to 2014 – award by an Adjudication Officer concerning penalisation of an employee,
- Criminal Justice Act 2011,
- Property Services (Regulation) Act 2011,
- Protection of Employees (Temporary Agency Work) Act 2012,
- Central Bank (Supervision and Enforcement) Act 2013,
- Protected Disclosures Act 2014.

While the majority of the Acts above specifically relate to employment law, the Acts that do not relate specifically to employment law (e.g. **Criminal Justice Act 2011**) provide protection for employees from penalisation where the employee makes a disclosure, or gives notice to his employer of his intention to make a disclosure, of an offence being committed in breach of the relevant Act.

Entitlements under the Acts outlined above are covered only where the determination, decision, order, etc. was made no earlier than 18 months prior to the date of insolvency of the employer and has not been appealed, or the appeal deadline has passed.

5. Calculation of Normal Weekly Earnings

The amount payable to an employee under the Insolvency Payments Scheme is calculated based on the employee's normal weekly earnings subject to a maximum of €600 per week, or pro rata

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for part of a week. Normal weekly earnings include an employee's gross weekly wage plus average regular overtime plus the value of any Benefits-in-Kind (BIKs).

5.1 Employees with a Fixed Salary

When calculating an insolvency payment due to an employee who works for a fixed wage or salary, his gross weekly wage is his earnings for his normal weekly working hours subject to a maximum of €600 per week. This figure should include any regular bonus or allowance which does not vary in relation to the amount of work done by the employee. In addition, the value of any BIKs provided to the employee (e.g. the provision of a company car for personal use, free accommodation, medical insurance, etc.) must also be taken into account.

Where an employee is normally required to work overtime, his average weekly overtime earnings must also be included and should be calculated as being the lower of the actual overtime earned but not paid, or the average weekly overtime due.

Average weekly overtime is calculated as the total amount of overtime earnings in the period of 26 weeks ending 13 weeks before the date of termination of the employee's employment, divided by 26. This figure should then be multiplied by the number of weeks (subject to a maximum of 8 weeks) for which overtime is outstanding, and compared with the amount actually owed for overtime to determine the lower amount.

5.2 Employees with Variable Pay

An employee whose pay depends on the amount of work done (e.g. piece rates, bonuses or commission, etc.) will have his normal weekly earnings (subject to a maximum of €600) calculated as follows:

- a) Calculate the total number of hours worked in the 26 week period ending 13 weeks before the date the employee's employment was terminated. Where an employee did not work during this 26 week period, the employer must include the hours worked in the last 26 weeks when the employee actually worked.
- b) Calculate the total pay earned in this 26 week period adjusted to take account of any changes in rates of pay which came into effect during the 13 weeks before the date the employee's employment was terminated.
- c) Divide the total pay earned calculated at (b) above by the number of hours worked calculated at (a) above to establish the employee's average hourly rate of pay. The normal weekly earnings is then calculated by multiplying the average hourly rate of pay by the number of normal weekly working hours at the date the employee's employment was terminated.

This method of calculation of normal weekly earnings also applies to shift-workers whose pay varies according to the shift they are on and to employees whose pay varies based on the day of the week or the time of the day they work.

5.3 Employees with no normal working hours

If an employee has no normal working hours, his average weekly earnings is his average weekly pay including any bonus, allowance or commission earned over the 52 week period when he was working before the date the employee's employment was terminated.

6. Application for Entitlements under the Acts

Claims under the Acts are normally made through the person who was legally appointed to wind up the business (normally the Liquidator or Receiver) who will certify the claims based on the records available from the employer. The Liquidator or Receiver will submit the claims to the Insolvency Payments Section of the DSP, and once processed, the DSP will make a payment to the Liquidator or Receiver, who, in turn, will make the appropriate payment to each employee. Payments are subject to statutory deductions as appropriate. The Insolvency Payments Section must be notified when the payments have been made and of the appropriate deductions.

All applications for entitlements under the Insolvency Payments Scheme must be submitted online. An application for outstanding wages, sick pay, holiday pay or minimum notice entitlements should be submitted on Form IP1. An application for any other entitlement under the Scheme (apart from Pension Scheme Contributions) should be submitted on a Form IP2. An application for payment of outstanding Pension or PRSA Contributions should be made on Forms IP3 and IP3 Employee Schedule. An Actuarial Certificate is required for Defined Benefit pension schemes. Applications for payment of unpaid pension contributions should be accompanied by Notice of Appointment of Liquidator/Receiver and Statement of Affairs. The Trust Deed and Deed of Adherence should also be submitted with the application. All documentation accompanying an application should contain the Employer PAYE registration number.

Applications will not be classed as complete until the printed, signed form, along with the supporting documentation has been received by the Insolvency Payments Section following the online submission.

7. Redress Provisions

Any person who has applied for a payment under the Insolvency Payments Scheme in respect of his normal weekly pay, sick pay, holiday pay or outstanding occupational pension scheme or PRSA contributions may complain to the Workplace Relations Commission (WRC) on the grounds that:

- The payment made was less than the amount that should have been paid, **or**
- Their application has been refused/payment has not been made.

The complaints procedure for this Act is dealt with in the chapter entitled “Introduction to Employment Law”. The parties will be given a hearing in private and the opportunity to present any evidence relevant to the complaint. The Adjudication Officer will then issue a written recommendation.

8. Offences

Any person who knowingly:

- Makes a false statement, false representation or conceals a material fact, **or**
- Produces or furnishes any document which he knows to be false,

regarding an employee’s entitlements under these Acts is guilty of an offence and liable to a Class C fine not exceeding €2,500.

CHAPTER 56

Industrial Relations Acts 1946 to 2019

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Trade Disputes**
 - 4. Industrial Action**
 - 5. Strikes**
 - 6. Secret Ballots**
 - 7. Pickets**
 - 8. Complaints Procedure**
 - 9. Grievance and Disciplinary Procedures**
 - 10. The Labour Court**
 - 11. Registered Employment Agreements and Sectoral Employment Orders**
-

1. Main Provisions

These Acts aim to promote harmonious relations between employers and employees by putting in place a framework for the conduct of industrial relations and trade disputes. The trade union law provisions reformed the old trade dispute law, introduced pre-strike secret ballot rules, restricted the use of injunctions in trade disputes and facilitated the rationalisation of the trade union movement. The Union must be in possession of a Negotiation Licence issued under the **Trade Union Act 1941**.¹ The industrial relations provisions provided for the establishment of the Labour Relations Commission (LRC) and changed procedures within the Labour Court and the Joint Labour Committees (JLCs).

2. Covered Employees

The **Industrial Relations Acts 1946 to 2019** refers to a “worker”, who is defined as a person who is or was employed, but specifically excludes the following, as they do not come within the definition of a “worker”:²

- A person who is employed by or under the State (e.g. civil servants),
- A teacher in a secondary school,
- A teacher in a national school,
- An officer of an Education and Training Board, and
- An officer of a school attendance committee.

The **Industrial Relations (Amendment) Act 2019** extends access to certain industrial relations services such as the WRC and Labour Court to members of the Garda Síochána for the first time.

¹ Section 9(1) Industrial Relations Act 1990

² Section 4 Industrial Relations Act 1946

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Although Gardaí are covered by certain provisions of the Industrial Relations Acts, they are prohibited from engaging in collective bargaining, establishing a Joint Labour Committee or Employment Regulation Order.

3. Trade Disputes

A trade dispute is a dispute, between employers and workers, which is connected with the employment or non-employment, or the terms and conditions of, or affecting the employment of any person.³

4. Industrial Action

Industrial action is defined as any action, which affects or is likely to affect, the terms or conditions, whether express or implied, of a contract, which is used as a means of compelling an employer to accept or not accept terms or conditions affecting employment. This covers action such as a ‘work to rule’ or ‘go slow’.

5. Strikes

A strike is defined as a cessation of work or a refusal to continue to work as a means of compelling the employer to accept or not accept terms or conditions affecting employment. This definition excludes political strikes such as protests over taxation.

The Acts give authorised trade union members immunity from legal action for taking part in strikes, provided that the requirements for ballots and strike notice in the Acts are complied with.⁴

6. Secret Ballots

The introduction of pre-strike secret ballot rules was a major change in this legislation. The rules of every trade union must provide that:⁵

- There shall be no industrial action or strike without a secret ballot
- All members of the trade union shall be given a fair opportunity for voting
- The management of a trade union will have discretion in relation to the organisation of industrial action, notwithstanding a majority vote in favour
- A trade union must make the results of a ballot known as soon as possible.

Following a ballot for industrial/strike action, the trade union must give the employer seven days' notice of such action. If the provisions in relation to secret ballots as outlined in Section 14 of the Acts have not been complied with, then an employer may seek a court injunction to prevent picketing of the work place.⁶

7. Pickets

The Acts entitles workers to protest their place of work “in contemplation or furtherance of a trade dispute”. The protesters must be acting on their own behalf or on behalf of a trade union. This applies to official and unofficial protesters.⁷

³ Section 8 Industrial Relations Act 1990

⁴ Section 13 of 1990 Act

⁵ Section 14 of 1990 Act

⁶ Section 19(1) of 1990 Act

⁷ Section 11

Workers can only picket their employer's premises (or a branch thereof) and cannot picket an associated company. Workers must picket the employer's premises, or if that is not practicable, at the approaches to the premises.

The Acts prohibit secondary picketing, i.e. where workers in dispute with company A, picket company B in an attempt to pressurise company A into making a settlement. There is an exception to this prohibition where company B has assisted company A for the purposes of frustrating the strike. In such a case, workers of company A may picket company B.

8. Complaints Procedure

The Industrial Relations Act, 1990, Code of Practice on Dispute Procedures (Declaration) Order 1992 (S.I. No. 1 of 1992) states that the main responsibility for dealing with industrial relations issues and the resolution of disputes rests with employers, employer organisations and trade unions. The code also covers dispute procedures including procedures in essential services. The main issues of the code are that matters in dispute are resolved in a peaceful manner and therefore avoid any actions that would lead to a disruption of supplies and services, or a loss of income to employees and of revenue to employers.

9. Grievance and Disciplinary Procedures

A **Code of Practice on Grievance and Disciplinary Procedures (S.I. No. 146 of 2000)** was introduced on the 22nd May 2000 and a copy is included at the end of this chapter. The main purpose of this Code of Practice was to provide guidance to employers, employees and their representatives on the general principles which apply in the operation of grievance and disciplinary procedures. It contains general guidelines on the application of grievance and disciplinary procedures and the promotion of best practice in giving effect to such procedures. While the Code outlines the principles of fair procedures for employers and employees generally, it is of particular relevance to situations of individual representation.

While arrangements for handling discipline and grievance issues vary considerably from employment to employment, depending on a wide variety of factors including the terms of contracts of employment, locally agreed procedures, industry agreements and whether trade unions are recognised for bargaining purposes, the principles and procedures of this Code of Practice should apply unless alternative agreed procedures exist in the workplace which conform to its general provisions for dealing with grievance and disciplinary issues.

Procedures are necessary to ensure that while discipline is maintained in the workplace by applying disciplinary measures in a fair and consistent manner, grievances are handled in accordance with the principles of natural justice and fairness. Apart from considerations of equity and natural justice, the maintenance of a good industrial relations atmosphere in the workplace requires that acceptable fair procedures are in place and observed.

Such procedures serve a dual purpose in that they provide a framework which enables management to maintain satisfactory standards and employees to have access to procedures whereby alleged failures to comply with these standards may be fairly and sensitively addressed. It is important that procedures of this kind exist and that the purpose, function and terms of such procedures are clearly understood by all concerned.

In the interest of good industrial relations, grievance and disciplinary procedures should be in writing and presented in a format and language that is easily understood. Copies of the procedures should be given to all employees at the commencement of employment and should be included

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in employee programmes of induction and refresher training and trade union programmes of employee representative training. All members of management, including supervisory personnel and all employee representatives should be fully aware of such procedures and adhere to their terms.

The essential elements of any procedure for dealing with grievance and disciplinary issues are that they be rational and fair, that the basis for disciplinary action is clear, that the range of penalties that can be imposed is well defined and that an internal appeal mechanism is available.

Procedures should be reviewed and up-dated periodically so that they are consistent with changed circumstances in the workplace, developments in employment legislation and case law, and good practice generally. Good practice entails a number of stages in discipline and grievance handling. These include raising the issue with the immediate manager in the first instance. If not resolved, matters are then progressed through a number of steps involving more senior management, HR/Industrial Relations staff, employee representation, as appropriate, and referral to a third party, either internal or external, in accordance with any locally agreed arrangements.

For the purposes of this Code of Practice, "employee representative" includes a colleague of the employee's choice and a registered trade union, but not any other person or body unconnected with the enterprise.

The procedures for dealing with such issues reflecting the varying circumstances of enterprises/organisations, must comply with the general principles of natural justice and fair procedures which include:

- Employee grievances are fairly examined and processed,
- Details of any allegations or complaints are put to the employee concerned,
- The employee concerned is given the opportunity to respond fully to any such allegations or complaints,
- The employee concerned is given the opportunity to avail of the right to be represented during the procedure, and
- The employee concerned has the right to a fair and impartial determination of the issues concerned, taking into account any representations made by, or on behalf of, the employee and any other relevant or appropriate evidence, factors or circumstances.

These principles may require that the allegations or complaints be set out in writing, that the source of the allegations or complaint be given or that the employee concerned be allowed to confront or question witnesses.

As a general rule, an attempt should be made to resolve grievance and disciplinary issues between the employee concerned and his immediate manager or supervisor. This could be done on an informal or private basis.

The consequences of a departure from the rules and employment requirements of the enterprise/organisation should be clearly set out in procedures, particularly in respect of breaches of discipline which, if proved would warrant suspension or dismissal.

Disciplinary action may include:

- An oral warning
- A written warning
- A final written warning
- Suspension without pay
- Transfer to another task, or section of the enterprise
- Demotion
- Some other appropriate disciplinary action short of dismissal
- Dismissal

Generally, the steps in the procedure will be progressive, for example, an oral warning, a written warning, a final written warning, and dismissal. However, there may be instances where more serious action, including dismissal, is warranted at an earlier stage. Situations which could warrant instant dismissal would have to be serious matters such as physical violence or theft. An employee may be suspended on full pay pending the outcome of an investigation into an alleged breach of discipline.

Procedures should set out clearly the different levels in the enterprise or organisation at which the various stages of the procedures will be applied. Warnings should be removed from an employee's record after a specified period and the employee advised accordingly.

The operation of a good grievance and disciplinary procedure requires the maintenance of adequate records. As already stated, it also requires that all members of management, including supervisory personnel and all employees and their representatives be familiar with and adhere to their terms.

10. The Labour Court

The Labour Court was established under the **Industrial Relations Act 1946**. Its functions are to assist in the adjudication and resolution of industrial disputes and promote good industrial relations.

The Labour Court is made up of representatives from employer organisations and trade unions with independent members as chair and vice chairs. The Court's functions can be divided between those relating to industrial relations matters and those relating to the determination of appeals in matters of employment rights as follows:

Industrial Relations

- Investigate trade disputes under the **Industrial Relations Acts 1946 to 2019**,
- Investigate, at the request of the Minister for Enterprise, Trade and Employment, trade disputes affecting the public interest, or conduct an enquiry into a trade dispute of special importance and report on its findings,
- Hear appeals of Adjudication Officer's recommendations/decisions made under the **Industrial Relations Acts 1946 to 2019**,
- Establish Joint Labour Committees and decide on questions concerning their operation,
- Register Joint Industrial Councils,
- Investigate complaints of breaches of Codes of Practice following consideration of the complaint by the Workplace Relations Commission,
- Give its opinion as to the interpretation of a Code of Practice.

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Employment Rights

- Hear all appeals of Adjudication Officer's decisions under the various Employment Rights and Pension Acts enactment,
- Approve working time agreements under the **Organisation of Working Time Act 1997**,
- Approve collective agreements regarding casual part-time employees under the **Protection of Employees (Part-Time Work) Act 2001**.

Since the enactment of the **Workplace Relations Act 2015** the Labour Court now has sole appellate jurisdiction in all disputes arising under employment rights enactments. Appeals to the Labour Court are conducted in public unless the Labour Court decides on application by either party that all or part of the appeal should be conducted in private due to the existence of special circumstances.

11. Registered Employment Agreements and Sectoral Employment Orders

Since 1st August 2015, the **Industrial Relations (Amendment) Act 2015** provides a statutory basis for the reintroduction of Registered Employment Agreements (REAs) between an employer(s) and trade unions governing remuneration and conditions of employment in individual enterprises and to provide for a new statutory framework (Sectoral Employment Orders (SEOs)) for establishing minimum rates of remuneration terms and conditions of employment for a specified type, class or group of workers.

11.1 Registered Employment Agreements

The legislation provides that any party (employer or trade union) to an employment agreement may apply to the Labour Court to have the agreement registered. The REA is binding only on the parties to the agreement. Once registered, the Labour Court will maintain a register of agreements and publish the details of the registration, variation or cancellation of the REA on its website.

The Labour Court will not register an employment agreement unless it is satisfied that:

- There is agreement between all parties that it should be registered,
- It is satisfied that it is desirable or expedient to have a separate agreement for the class, type or group of workers covered by the agreement,
- The trade union(s) of workers is substantially representative of such workers,
- The agreement provides that, if a trade dispute occurs between workers to whom the agreement relates and their employer, industrial action or lockout shall not take place until the dispute has been submitted for settlement by negotiation in the manner specified in the agreement,
- The registration of the agreement is likely to promote harmonious relations between workers and their employer, and the avoidance of industrial unrest,
- The agreement specifies the circumstances in which the agreement may be terminated.

An REA will not prejudice any rights as to rates of remuneration or conditions of employment conferred on any worker by or under this or any other Act.

The Act provide for the variation of REAs where all parties are in agreement. Where agreement cannot be reached following the exhaustion of the dispute resolution procedures contained in the REA, one party may refer the dispute to the Workplace Relations Commission for conciliation. If agreement is not reached following conciliation, it can be referred to the Labour Court for investigation. The Labour Court can either refuse or vary the agreement as it deems appropriate

and decide on the interpretation of any provision in the REA. The Act provides that the terms of an REA will form part of an employee's contract of employment.

REAs can be cancelled where all parties agree, where the REA is no longer representative of the workers concerned or where it has expired and an application to renew it has not been made.

11.2 Sectoral Employment Orders

The legislation provides that a trade union of workers or a trade union or organisation of employers which, the Labour Court is satisfied is substantially representative of workers or employers of a particular class, type or group of workers in a particular economic sector, may request the Labour Court to examine the terms and conditions relating to the remuneration, sick pay or pension of workers of that particular sector and request the Labour Court to make a recommendation to the Minister on the matter.

The Minister has 6 weeks to accept the recommendation and confirm the terms of the recommendation effective from a date specified by the Minister in a Sectoral Employment Order. The order shall only come into effect when it is passed by both Houses of the Oireachtas.

The Labour Court may not consider a request where the Minister has made an employment order for that sector in the previous 12 months, unless there are exceptional and compelling reasons.

The Labour Court will have to be satisfied that it is normal and desirable practice to have separate rates of remuneration, sick pay and pension provisions in the sector concerned and any recommendation is likely to promote harmonious relations in the sector and preserve high standards of training and qualifications and ensure fair and sustainable rates of remuneration in the sector.

The recommendation by the Labour Court may provide for:

- A minimum hourly rate of pay in excess of the National Minimum Wage,
- Not more than 2 higher hourly rates of basic pay based on length of service in the sector or enterprise concerned, or the attainment of recognised standards or skills in the sector concerned,
- Minimum rates of pay in respect of young workers and apprentices,
- Any pay in excess of basic pay in respect of shift work, piece work, overtime, unsocial hours worked or travelling time, and
- Minimum rates of contributions by employers and workers to a pension scheme.

An SEO shall apply to all workers in the relevant sector, irrespective of whether the worker and his or her employer were party to the request to the Labour Court and the terms of any SEO will form part of a worker's contract of employment. Employees are protected from penalisation where they invoke any entitlements under the Act.

The Act provides for a mechanism to allow an employer, experiencing financial difficulties, apply to the Labour Court for a temporary exemption from the requirement to pay the remuneration provided for by order. The exemption is subject to a minimum of 3 months and a maximum of 24 months. An exemption can only be availed of once in a 5 year period.

If an SEO has not been amended or revoked within 3 years, the Minister may request the Labour Court to undertake a review of the terms and conditions of the SEO.

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Code of Practice: Grievance and Disciplinary Procedures S.I. No. 146 of 2000

Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000

WHEREAS the Labour Relations Commission has prepared under subsection (1) of section 42 of the Industrial Relations Act, 1990 (No. 19 of 1990), a draft code of practice on grievance and disciplinary procedures and which code is proposed to replace the code set out in the Schedule to the Industrial Relations Act, 1990, Code of Practice on Disciplinary Procedures (Declaration) Order, 1996 (S.I. No 117 of 1996);

AND WHEREAS the Labour Relations Commission has complied with subsection (2) of that section and has submitted the draft code of practice to the Minister for Enterprise, Trade and Employment;

NOW THEREFORE, I, Mary Harney, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by subsections (3) and (6) of that section, the Labour (Transfer of Departmental Administration and Ministerial Functions) Order, 1993 (S. 1. No. 18 of 1993), and the Enterprise and Employment (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 305 of 1997), and after consultation with the Commission, hereby order as follows:

1. This Order may be cited as the Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000.
2. It is hereby declared that the code of practice set out in the Schedule to this Order shall be a code of practice for the purposes of the Industrial Relations Act, 1990 (No. 19 of 1990).
3. The code of practice set out in the Schedule to the Industrial Relations Act, 1990, Code of Practice on Disciplinary Procedures (Declaration) Order, 1996 (S.I. No 117 of 1996), is revoked.

Schedule

1. INTRODUCTION

1. Section 42 of the Industrial Relations Act, 1990 provides for the preparation of draft Codes of Practice by the Labour Relations Commission for submission to the Minister, and for the making by him of an order declaring that a draft Code of Practice received by him under section 42 and scheduled to the order shall be a Code of Practice for the purposes of the said Act.
2. In May 1999 the Minister for Enterprise, Trade and Employment requested the Commission under Section 42 of the Industrial Relations Act, 1990 to amend the Code of Practice on Disciplinary Procedures (S.I. No. 117 of 1996) to take account of the recommendations on Individual Representation contained in the Report of the High Level Group on Trade Union Recognition. The High Level Group, involving the Departments of the Taoiseach, Finance and Enterprise, Trade and Employment, the Irish Congress of Trade Unions (ICTU), the Irish Business and Employers' Confederation (IBEC) and IDA-Ireland, was established under paragraph 9.22 of Partnership 2000 for Inclusion Employment and Competitiveness to consider proposals submitted by ICTU

on the Recognition of Unions and the Right to Bargain and to take account of European developments and the detailed position of IBEC on the impact of the ICTU proposals.

3. When preparing and agreeing this Code of Practice the Commission consulted with the Department of Enterprise, Trade and Employment, ICTU, IBEC, the Employment Appeals Tribunal and the Health and Safety Authority and took account of the views expressed to the maximum extent possible.
4. The main purpose of this Code of Practice is to provide guidance to employers, employees and their representatives on the general principles which apply in the operation of grievance and disciplinary procedures.

2. GENERAL

1. This Code of Practice contains general guidelines on the application of grievance and disciplinary procedures and the promotion of best practice in giving effect to such procedures. While the Code outlines the principles of fair procedures for employers and employees generally, it is of particular relevance to situations of individual representation.
2. While arrangements for handling discipline and grievance issues vary considerably from employment to employment depending on a wide variety of factors including the terms of contracts of employment, locally agreed procedures, industry agreements and whether trade unions are recognised for bargaining purposes, the principles and procedures of this Code of Practice should apply unless alternative agreed procedures exist in the workplace which conform to its general provisions for dealing with grievance and disciplinary issues.

3. IMPORTANCE OF PROCEDURES

1. Procedures are necessary to ensure both that while discipline is maintained in the workplace by applying disciplinary measures in a fair and consistent manner; grievances are handled in accordance with the principles of natural justice and fairness. Apart from considerations of equity and natural justice, the maintenance of a good industrial relations atmosphere in the workplace requires that acceptable fair procedures are in place and observed.
2. Such procedures serve a dual purpose in that they provide a framework which enables management to maintain satisfactory standards and employees to have access to procedures whereby alleged failures to comply with these standards may be fairly and sensitively addressed. It is important that procedures of this kind exist and that the purpose, function and terms of such procedures are clearly understood by all concerned.
3. In the interest of good industrial relations, grievance and disciplinary procedures should be in writing and presented in a format and language that is easily understood. Copies of the procedures should be given to all employees at the commencement of employment and should be included in employee programmes of induction and refresher training and, trade union programmes of employee representative training. All members of management, including supervisory personnel and all employee representatives should be fully aware of such procedures and adhere to their terms.

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4. GENERAL PRINCIPLES

1. The essential elements of any procedure for dealing with grievance and disciplinary issues are that they be rational and fair, that the basis for disciplinary action is clear, that the range of penalties that can be imposed is well defined and that an internal appeal mechanism is available.
2. Procedures should be reviewed and up-dated periodically so that they are consistent with changed circumstances in the workplace, developments in employment legislation and case law, and good practice generally.
3. Good practice entails a number of stages in discipline and grievance handling. These include raising the issue with the immediate manager in the first instance. If not resolved, matters are then progressed through a number of steps involving more senior management, HR/IR staff, employee representation, as appropriate, and referral to a third party, either internal or external, in accordance with any locally agreed arrangements.
4. For the purposes of this Code of Practice, "employee representative" includes a colleague of the employee's choice and a registered trade union but not any other person or body unconnected with the enterprise.
5. The basis of the representation of employees in matters affecting their rights has been addressed in legislation, including the Protection of Employment Act, 1977; the European Communities (Safeguarding of Employees Rights on Transfer of Undertakings) Regulations, 1980; Safety, Health and Welfare at Work Act, 1989; Transnational Information and Consultation of Employees Act, 1996; and the Organisation of Working Time Act, 1997. Together with the case law derived from the legislation governing unfair dismissals and other aspects of employment protection, this corpus of law sets out the proper standards to be applied to the handling of grievances, discipline and matters detrimental to the rights of individual employees.
6. The procedures for dealing with such issues reflecting the varying circumstances of enterprises/organisations, must comply with the general principles of natural justice and fair procedures which include:
 - That employee grievances are fairly examined and processed;
 - That details of any allegations or complaints are put to the employee concerned;
 - That the employee concerned is given the opportunity to respond fully to any such allegations or complaints;
 - That the employee concerned is given the opportunity to avail of the right to be represented during the procedure;
 - That the employee concerned has the right to a fair and impartial determination of the issues concerned, taking into account any representations made by, or on behalf of, the employee and any other relevant or appropriate evidence, factors or circumstances.
7. These principles may require that the allegations or complaints be set out in writing, that the source of the allegations or complaint be given or that the employee concerned be allowed to confront or question witnesses.

8. As a general rule, an attempt should be made to resolve grievance and disciplinary issues between the employee concerned and his or her immediate manager or supervisor. This could be done on an informal or private basis.
9. The consequences of a departure from the rules and employment requirements of the enterprise/organisation should be clearly set out in procedures, particularly in respect of breaches of discipline which if proved would warrant suspension or dismissal.
10. Disciplinary action may include:
 - An oral warning
 - A written warning
 - A final written warning
 - Suspension without pay
 - Transfer to another task, or section of the enterprise
 - Demotion
 - Some other appropriate disciplinary action short of dismissal
 - Dismissal
11. Generally, the steps in the procedure will be progressive, for example, an oral warning, a written warning, a final written warning, and dismissal. However, there may be instances where more serious action, including dismissal, is warranted at an earlier stage. In such instances the procedures set out at paragraph 6 hereof should be complied with.
12. An employee may be suspended on full pay pending the outcome of an investigation into an alleged breach of discipline.
13. Procedures should set out clearly the different levels in the enterprise or organisation at which the various stages of the procedures will be applied.
14. Warnings should be removed from an employee's record after a specified period and the employee advised accordingly.
15. The operation of a good grievance and disciplinary procedure requires the maintenance of adequate records. As already stated, it also requires that all members of management, including supervisory personnel and all employees and their representatives be familiar with and adhere to their terms.

Given under my Official Seal,
This 26th day of May 2000

Mary Harney
Minister for Enterprise, Trade and Employment

CHAPTER 57

Unfair Dismissals Acts 1977 to 2015

- 1. Main Provisions**
 - 2. Covered Employees**
 - 3. Employees with less than 1 year's Service**
 - 4. Excluded Employees**
 - 5. Limiting the Acts**
 - 6. Illegal Contracts**
 - 7. Types of Dismissal**
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 - 9. Unfair Grounds for Dismissal**
 - 10. Fair Procedures**
 - 11. Burden of Proof**
 - 12. Unfair Dismissal and Fixed Term Contracts**
 - 13. Redress Provisions**
 - 14. Compliance Notice**
 - 15. Taking a Civil Action using the Courts**
-

1. Main Provisions

The main provisions of the **Unfair Dismissals Acts 1977 to 2015** are to protect employees from being unfairly dismissed from their employment and to provide an employee with redress in the event of unfair dismissal. The Acts list grounds for dismissal, which are fair, and grounds which are automatically unfair. The procedures followed by the employer must also be fair. An unfairly dismissed employee can recover damages, and/or be reinstated or re-engaged by his employer.

2. Covered Employees

The Acts cover employees who:¹

- Work under a contract of employment or apprenticeship,
- Are employed through an employment agency (**Note:** It is the hirer who is deemed to be the employer for the purpose of this Act),
- Have one year's continuous service (as defined in the **Minimum Notice and Terms of Employment Acts 1973 to 2005**).

The requirement to have 1 year's continuous service does not apply if the dismissal arises due to:

¹ Unfair Dismissals Act 1977, Section 1

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- Pregnancy of the employee, or
- Trade union membership or activities, or
- An employee exercising their rights under the **Maternity Protection Acts 1994 to 2022, Paternity Leave and Benefit Act 2016, Adoptive Leave Acts 1995 and 2005, Parental Leave Acts 1998 to 2019, Parent's Leave and Benefit Act 2019, National Minimum Wage Acts 2000 and 2015 or Carer's Leave Act 2001.**
- The employee making a protected disclosure under the **Protected Disclosure Act 2014.**

3. Employees with Less than 1 year's Service

Except in the circumstances outlined above, employees who have less than 1 year's service are not eligible to take a case under the **Unfair Dismissals Acts 1977 to 2015**. However, they can still make a complaint to the Workplace Relations Commission (WRC) or Labour Court in certain situations.

Under Section 13 of the **Industrial Relations Act 1969**, an employee can make a complaint directly to the WRC about a trade dispute. A trade dispute is a dispute between an employer and an employee(s) relating to the employment or non-employment, or the terms or conditions of the employment, of any person - other than pay rates, working hours or annual holidays.

Under Section 20 of the **Industrial Relations Act 1969** an employee can make a complaint directly to the Labour Court about a trade dispute, including ones related to pay rates, working hours or annual holidays.

When making a complaint under these provisions, the employee agrees to be bound by the decision of the WRC or Labour Court. The important distinction involving these sections is that the courts will issue a recommendation only which is not legally binding on the employer. Employers can choose not to accept the recommendation or indeed not to engage in the process at all.

Whether the employer engages with, or agrees to be bound by, such decisions would depend on the specific employer. Some employers may be unionised and be reluctant to ignore a recommendation from the courts while other companies may not want adverse publicity which may affect business.

Case Law: A Worker v Herbert Park Hotel (LCR 18331)

The employee commenced as the Conference and Banqueting Manager on 11th April 2005. She left her previous job for this lower paying position in order to gain more experience. On 28th April 2005 she was dismissed with immediate effect with the hotel citing cutbacks. Shortly after her dismissal she noticed that the hotel had advertised a number of jobs including one in the department where she had worked.

*The employee made a complaint to the Labour Court under section 20 of the **Industrial Relations Act 1969**. The hotel did not attend the hearing and they were not represented. Based on the evidence supplied, the Court recommended that the hotel pay her €15,000 in settlement.*

Case Law: A Worker v Park Hotel Kenmare (LCR 21798)

The employee commenced as the General Manager of the hotel in January 2008. He claimed he was headhunted for the role. He was dismissed with immediate effect in April 2008.

*The employee made a complaint to the Labour Court under section 20 of the **Industrial Relations Act 1969**. The hotel did not attend the hearing but was legally represented. They disputed that the employee was headhunted and claimed they were entitled to terminate the contract during the probation period. The Labour Court found that the employee was not afforded fair procedures and was denied natural justice when being dismissed.*

Based on the circumstances and the salary the employee was earning, the Court recommended that the hotel pay him €90,000 in settlement.

4. Excluded Employees

Certain employees are excluded from claiming under the Acts:²

- People of retiring age,
- People under 16 years of age
- Those employed by a close relative in a private house or farm where both reside,
- Members of the Defence Forces and Gardaí,
- SOLAS trainees and apprentices,
- State employees,
- Officers of local authorities, health boards and Education and Training Boards, and
- An employee on probation at the beginning of his employment provided that the duration of the probation does not exceed 1 year and is specified in a written contract of employment.³

Note: This duration may change during 2022 as **EU Directive 2019/115** on Transparent and Predictable Working Conditions proposes to reduce probationary periods to a maximum of 6 months. This Directive is due to be transcribed into national law by August 2022.

5. Limiting the Acts

Section 13 of the 1977 Act provides that any provision in a contract of employment, which attempts to limit or exclude the application of the Acts, shall be void.

6. Illegal Contracts

Obviously, all the terms of the contract, written and unwritten, must be legal. For example, a contract is illegal and unenforceable if it includes a Revenue fraud such as an agreement between the parties to avoid the payment of Income Tax, PRSI or USC. Such contracts might arise where the employer pays the employee “cash in hand” or where the parties incorrectly describe their relationship as self-employed, so as to avoid taxation of payments under the PAYE system.

However, the **Unfair Dismissals Acts 1977 to 2015** provides that, notwithstanding the contraventions of law, a dismissed employee is entitled to redress for unfair dismissal. In addition, the Workplace Relations Commission (WRC) or the Labour Court may refer the case to the Revenue Commissioners where they believe an underpayment of tax has arisen or the Department of Social Protection (DSP) if the case involves an employee working and claiming a DSP benefit simultaneously, with the knowledge of their employer.

Thus an employer who attempts to ‘employ’ someone by paying them “cash in hand” may find themselves liable in employment law for the unfair dismissal of that person, and may also be subject to an investigation by both Revenue and the DSP.

² Unfair Dismissals Act 1977, Section 2, as amended by Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007, Section 25

³ Unfair Dismissals Act 1977, Section 3

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7. Types of Dismissal

"Dismissal" as defined in the Acts generally refers to the termination by an employer of an employee's contract of employment, whether any notice of the termination was or was not given to the employee.

Dismissal also includes "constructive dismissal". Constructive dismissal is where an employee leaves their employment as a result of the employer's behaviour. This is treated as dismissal rather than resignation. The dismissal is not actual but 'constructed' from the circumstances. Examples of employers' behaviour, which justifies the employee resigning and later claiming constructive dismissal, are failing to provide a safe system of work, making unreasonable demands or sexual harassment.

Case Law: Byrne v RHM Foods (Irl.) (UD 69/1979)

The employee was the secretary to the marketing manager who was suspended. The employee was assured that her job was safe. However, the keys of the marketing manager's filing cabinet were taken away, the employee was given no work to do, had no contact with her colleagues and when her telephone was disconnected, she had no option but to resign. It was held that this was not a genuine resignation and therefore was constructive dismissal.

Dismissal does not include:

- An employee's resignation,
- The frustration of an employment contract, i.e. where it becomes impossible to perform, for example following the destruction of the business premises in a fire,
- The expiry of a fixed term contract.

8. Fair Grounds for Dismissal

Once a claim for unfair dismissal has been made, the onus is on the employer to show that the dismissal was not unfair. The Acts list the following fair grounds for dismissal:

Capability

This covers the claimant's physical or mental ability to do his job.

Competence

This covers poor work performance.

Qualifications

This applies to formal employment requirements e.g. an accountant who was struck off by his professional body.

Conduct

This is the most commonly used ground in the Acts. Examples include theft, assault, and breach of confidentiality. This is now interpreted to include conduct outside of the workplace, if it damages the employer.

Redundancy

As defined in the **Redundancy Payments Acts 1967 to 2022**. However, redundancy may be unfair if it is selective, e.g. only women are chosen for redundancy.

Contravening statute

A driver who has had his licence revoked could fairly be dismissed, as his continued employment would be in breach of the **Road Traffic Acts**.

Other substantial grounds

This ground is rarely used.

Case Law: An Employee v An Employer EAT (UD4/2008)

The employee, like all other employees was in possession of a company owned laptop computer. The employee complained to the office manager that the computer was slow and that there were problems with it. The office manager logged onto the computer, as the administrator, and found a large amount of data on the computer including photos, excel documents and a payroll system with the employee's partner's company name on it. The manager spoke to the Accountant and the company director and was told that the payroll system did not refer to the employer. The employer noted that it looked like the employee was working on the payroll system on the employers paid work time. The employee was informed by email to remove the data on to a memory stick. This was confirmed by the employee. Sometime later the employee again complained that the computer was very slow. The employer audited all the company laptops five days later. It was discovered that the data had been replaced on the laptop. A disciplinary meeting was held and the employee was represented. Again the company audited the laptops some weeks later and found further evidence of the employee using the laptop on company time to do payroll for her partner's business. There was another disciplinary meeting and subsequent to this an outside agency was hired to investigate the use of the laptop in question. He produced a list of dates and times. The director then held another disciplinary meeting and a letter of dismissal was issued on grounds that the employee had breached the trust and that it was a significant breach.

The employee's allegation of unfair dismissal was found by the EAT to be a fair dismissal as the grounds for the dismissal were substantial and that the employee had denied any wrongdoing and was given every opportunity by the employer to deal with the issues. She had been given every chance to present her analysis of the findings regarding her use of the laptop.

9. Unfair Grounds for Dismissal

The Acts state that all dismissals are deemed to be unfair, unless the employer can show otherwise. The specific unfair reasons for dismissal are:⁴

- a) Trade union membership or activities. This includes any employee who is a member of a trade union which has requested the Labour Court to investigate a trade dispute, and the employee is in the employment grade or category to which the dispute relates, and the employee has provided evidence or information to any person regarding the dispute. A trade union may request the Labour Court to investigate a trade dispute (a dispute between employers and workers which is connected with the employment or non-employment, or the terms or conditions of or affecting the employment, of any person), where:
 - The employer does not engage in collective bargaining negotiations and the internal dispute resolution procedures, if any, have failed, and
 - The employer has failed to observe a provision of the Code of Practice on Grievance and Disciplinary Procedures, and

⁴ Unfair Dismissals Act 1977, Section 6(2) as amended by the Protected Disclosures Act 2014 and Industrial Relations (Amendment) Act 2015

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- Neither the employees or the trade union have acted in a manner to frustrate the employer in complying with the Code, and
 - The employees and trade union have not resorted to industrial action.
- b)** Religious or political opinions,
- c)** Involvement in legal proceedings against an employer,
- d)** Race, colour or sexual orientation,
- e)** Pregnancy of the employee
- f)** Employee's age,
- g)** Refusal to pay under the **National Minimum Wage Acts 2000 and 2015**,
- h)** Membership of the travelling community,
- i)** Unfair selection for redundancy,
- j)** Exercising rights under the **Maternity Protection Acts 1994 to 2022, Paternity Leave and Benefit Act 2016, Adoptive Leave Acts 1995 and 2005, Parental Leave Acts 1998 to 2019, Parent's Leave and Benefit Act 2019, or Carer's Leave Act 2001**,
- k)** An employee making a protected disclosure under the **Protected Disclosures Act 2014**.

On request, every employee is entitled to be given, within 14 days, a written statement of the reasons for their dismissal.⁵ Failure to do so does not make the dismissal an unfair one but the WRC or the Labour Court will take the failure to do so into account when making a decision on the dismissal.

It should be remembered that apart from dismissal relating to trade union activities, the grounds listed above do not lead to an automatic finding of unfair dismissal. In listing the above grounds as possible grounds for unfair dismissal, it must be remembered that the legislation states “*without prejudice to the generality of subsection 1*”. Thus, in certain extreme cases, a dismissal on one of the grounds above may be justified.

(a) Trade union membership or activities

The Act provides that a dismissal will be unfair if it results from “the employee’s membership ...of, or, his engaging in activities on behalf of, a trade union...where the times at which he engaged in such activities are outside his hours of work in which he is permitted pursuant to the contract of employment...so to engage.”⁶

Freedom of association is a right guaranteed under our Constitution. Every citizen (according to art. 40.6.1) has the right “to form associations and unions.” The unfair dismissals legislation further insulates this right by providing that should an employee be dismissed because of his trade union activities that are pursued outside his hours of work he may have an action under the **Unfair Dismissals Acts 1977 to 2015**. Such a dismissal will be deemed unfair, regardless of whether the employer has substantial reasons justifying the dismissal.

Case Law: Williams v. Gleeson [1978]

The applicants who joined a trade union were told by their employer “it is either the union or your job.”

Held – this was an unfair dismissal.

⁵ Unfair Dismissals Act 1977, Section 14(4)

⁶ Unfair Dismissals Act 1977, Section 6 (2)(a)

Case Law: Wixted v. Sang Mann [1991]

The applicant joined a trade union because of poor working conditions. The union later wrote to the employer requesting a meeting. The applicant was dismissed allegedly because of her poor work performance.

Held - the tribunal did not accept this. The real reason behind her dismissal was her trade union activities and this was deemed unfair.

An employee, who is dismissed wholly or mainly because of his trade union activities, need not show that he had one year's continuous service with that employer.⁷ This is an exception to the general rule that any employee, before seeking redress under the Acts must show at least one year's continuous service with the same employer. This subsection of the Act highlights how determined the legislature are to protect the right of the employee to partake in trade union activity.

Case Law: White v. Simon Betson [1992]

The applicant was only working for his employer for one month before being dismissed. The applicant went out sick for a few days. Upon his return he produced a medical certificate explaining his absence. The employer dismissed him on grounds of absenteeism. Prior to his dismissal the applicant had joined a trade union.

Held - the tribunal, examining the facts, were of the view that the employee's dismissal could not be justified on the grounds of non-attendance. The tribunal was of the opinion that he was dismissed simply because of the fact that he joined a trade union and therefore his dismissal was unfair.

(b) Religious or political beliefs

The Act provides that dismissing an employee, wholly or mainly, because of his religious or political views is unfair. This provision in the Act reflects the Constitution's protection of religious freedom.

Case Law: Merriman v. St. James Hospital [1986]

The claimant was a hospital attendant who refused to bring a crucifix and candle to a dying patient. She claimed that as she did not worship false Gods, she could not perform this duty. The employer dismissed her, claiming that the bringing of such items to a dying patient was an important part of her duties.

Held – her dismissal was unfair as it was done solely because of her religious preferences. The tribunal ordered that the applicant be re-engaged and given compensation.

Case Law: Flynn v. Power [1985] I.L.R.M. 336

On August 22, 1982, Eileen Flynn received a letter from Sr. Mary Anna Power giving her three months' notice of her dismissal from her position as a teacher of history and Irish in the Holy Faith Secondary School in New Ross. The ground for dismissal was that Ms. Flynn's lifestyle amounted to a rejection of the norms of behaviour and ideals that the school, a Catholic secondary school, sought to promote. Ms. Flynn was living with a separated married man, by whom she had a child. For her part, Ms. Flynn considered that her private life should be of no concern to the school authorities and she took proceedings under the Unfair Dismissals Acts.

⁷ Unfair Dismissals Act 1977, Section 7(7)

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Held – Dismissing her subsequent claim that her dismissal was unfair having regard to s.6(2)(f) of the Unfair Dismissals Acts, as it resulted wholly or mainly from her pregnancy, Costello J. held that Ms Flynn was not dismissed as a result of her pregnancy but rather because she refused to terminate the relationship with her partner.

(c) Involvement in criminal or civil proceedings against the employer

It is unfair to dismiss an employee simply on the grounds that the employee is bringing civil or criminal proceedings against the employer. The subsection further provides that where an employee is dismissed simply because he was a witness to such proceedings, such dismissal will also be deemed unfair. The employer would find it impossible to justify a dismissal based on this ground and as a consequence such dismissals are not common.

Case Law: Hannon v. Prendergast [1985]

The employer put unfair pressure on an employee not to give evidence regarding a fight that had occurred between two stable hands. The employee gave his evidence and the following day received one week's notice of his dismissal. The dismissal was found to be totally unjustified and the employee succeeded in an action for unfair dismissal.

Case Law: Milchem v. White [1980]

The applicant's mother threatened to bring legal action against the applicant's employer. The applicant was to be a witness in such proceedings. The EAT found that the applicant was subsequently dismissed from his position.

Held – this dismissal was unjustified and unfair.

(d) Race colour or sexual orientation

The 1977 Act provided that the dismissal of any employee because of his race or colour is unfair. Section 5 of the 1993 Act states it is also unfair to dismiss an employee on the grounds of his sexual orientation.

(e) Pregnancy of the employee

The 1977 Act provided that it shall be unfair to dismiss an employee on the grounds that the employee is pregnant. This subsection has been amended by the Maternity Protection legislation. The Maternity Protection Acts extended the protection of unfair dismissal to maternity leave also and supplement the employee's rights in relation to dismissal.

The subsequent Acts ensure that a pregnant employee may not be dismissed from the beginning of her pregnancy to the end of her maternity leave unless there were substantial grounds for doing so.

The Maternity Acts also provide that any employee who claims to have been dismissed on the grounds of pregnancy need not have one year's continuous service with the same employer.

Case Law: Mason v. Winston's Jewellers [2003]

The claimant commenced work as a sales assistant in the respondent's jeweller shop in September 2000. In May 2001 she advised her employer that she was pregnant. Prior to taking her maternity leave, the claimant took sick leave relating to her pregnancy. During this period she was informed via a letter that her services were no longer needed and she was being made redundant because of a slowdown in business. The claimant argued that she had been dismissed on the grounds of her pregnancy and that she had never been made aware prior to her dismissal, that business was

slow. Indeed, she alleged that following her dismissal the respondent employed his own sister to work in the shop.

Held - *The tribunal accepted evidence introduced by the respondent that business had slowed down with the opening of three jewellery shops in the Pavilions Shopping Centre, 500 metres from the respondent's store. The respondent had only employed his sister on a part-time basis since that time. The employee's dismissal was not based on her pregnancy but on objective redundancy grounds and was therefore justified.*

Case Law: Maxwell v. English Language Institute [1989]

The applicant was working as a secretary for a short time. She submitted an application form requesting maternity leave to her employer who failed to complete it. When she later told her employer of her intention to take her leave, he dismissed her.

Held – *her dismissal was unfair as it was on the grounds of her pregnancy.*

Case Law: Woods v. Monkscombe Ltd. [1990]

An employee was told to quadruple her output if she was to keep her job. This new deadline was given one day after she had informed him of her pregnancy.

Held - *the deadline and her dismissal were unfair.*

The dismissal of a pregnant employee may be justified where the employee is unable to do the work she was employed for or continuing her employment would lead to a breach of safety legislation, provided that the employer was able to offer her a reasonable alternative which she refused.⁸

(f) Age

Dismissal of an employee because of his age was not a ground under which you could bring an action under the 1977 Act. This ground was introduced by the 1993 Act.⁹ It is therefore no longer permitted to dismiss an employee simply because of his age.

Case Law: Kerrigan v Peter Owens Advertising and Marketing Ltd. (1998)

The applicant was 62 when he was dismissed. The employer claimed that he had simply been made redundant.

Held – *there was no evidence of any real redundancy. The applicant had been dismissed because of his age.*

Case Law: Donegal County Council v Porter and Others (1993) (ELR 101)

A number of fire fighters with long service were dismissed on the grounds that they had reached 55 years of age. They were of the understanding that retirement age was 60, presuming they were capable of performing their duties as no written contracts were provided by their employer. The Department of the Environment had issued a circular recommending a retirement age of 55 and Donegal County Council implemented its terms. It was held that the employer was in breach of contract by attempting to unilaterally alter their contractual situation and the employees were reinstated.

⁸ Unfair Dismissals Acts 1977 to 2007

⁹ Unfair Dismissal (Amendment) Act 1993, Section 5

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g) Under the National Minimum Wage Acts 2000 and 2015

This Act provides that where an employer dismisses an employee for exercising, or attempting to exercise his rights under this legislation, such dismissal will be deemed to be automatically unfair.¹⁰ This section includes employees who have less than one year's service.

10. Fair Procedures

An employer must use fair procedures at all times in dealing with an employee, including during dismissal. Most unfair dismissals cases concern unfairness in procedures such as lack of reasons for dismissal and not allowing an employee to make representations. Even where an employer had a fair ground to dismiss an employee, lack of fair procedures or the failure of the employer to follow fair procedures will often turn this into an unfair dismissal.

10.1 Reasonableness of the Employer's Decision

While the motivation behind the employer's decision to dismiss is of vital importance in determining whether such dismissal was fair, the reasonableness of it is also significant. On the face of it, an employer may have good grounds for dismissing the employee, however the reasonableness of the decision given the surrounding circumstances will be of considerable importance. Adherence to fair procedures will be a good indication that the employer has made a reasonable decision.

The 1977 legislation did not expressly mention the existence of fair procedures, however such procedures were implied into the legislation by the Constitution. Fair procedures were given express recognition under section 1993 Act which states that:

"... in determining if a dismissal is an unfair dismissal, regard may be had . . . to the reasonableness or otherwise of the conduct of the employer in relation to the dismissal, and to the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in section 14(1) of this Act or with the provisions of any code of practice . . ."¹¹

Reasonableness therefore may be determined by examining whether or not the employer in taking the action of dismissal was in compliance with fair procedures or with any statutory code of practice.

The employer must have the power to dismiss his employees where there is legitimate justification for doing so. However, it is essential that the employer does not abuse this power. In order to ensure that the power of dismissal is not abused, fair procedures should be adopted at all times in relation to dismissal matters. The US Supreme Court has recognised the importance of fair procedures in **McNabb v. The US (1943)** where the court stated that "the history of liberty has been the history of procedural safeguards". Essentially, the decision of the employer must be reasonable under the circumstances. Thus in:

Case Law: Bunyan v. United Dominions Trust (Ireland) Ltd. [1982] ILRM 404

The fairness or unfairness of dismissal is to be judged by the objective standard of the way in which a reasonable employer in those circumstances in that line of business would have behaved. The Tribunal therefore does not decide the question whether or not, on evidence before it, the employee should be dismissed.

¹⁰ National Minimum Wage Act 2000, Section 36(1)

¹¹ Unfair Dismissals (Amendment) Act 1993, Section 5(b)

Case Law: Looney & Co. v. Looney [1984] OJIS LABL 135

Our responsibility is to consider against the facts what a reasonable employer in the same position and circumstances at that time would have done and decided and to set this up as a standard against which the employer's action and decision can be judged.

10.2 Fair and Proper Procedures

The adherence to fair and proper procedures will ensure that the employer is more informed before making a decision to dismiss. It also affords the employee with the opportunity of defending himself to any charges that are being made against him. Fair procedures may be gleaned from either the Constitution or principles of natural justice or alternatively, the employer may have already outlined these matters in the form of grievance procedures.

It must be remembered that while a failure to follow fair procedures will almost always lead to the dismissal being rendered unfair, it is not always the case. There are certain exceptional circumstances where an employee may be dismissed without following the procedures as laid down. The appropriate test is that laid down in:

Case Law: Loftus and Healy v. An Bord Telecom [1987]

The appellants were dismissed by the Bord as a result of an incident in which it was alleged the appellants were involved in an assault on another employee of the Bord.

Held - by Barron J dismissing the appeal: (1) Once the Court was satisfied that the assault took place the onus was on the employer to show not only that it was the ground for dismissal but that it justified the dismissal to meet the test in S.6 of the 1977 Act; that all the circumstances should be taken into account, and this included events coming to light after the dismissal itself.

"The question is not whether the plaintiffs were deprived of procedures to which they were entitled, but whether the denial to them of such procedures is such that the employer must be deemed to have failed to establish the basis of the dismissal as the whole or the main reason for justifying their dismissal."

A hypothetical example of this very point was made in the following case, where the court pointed out that circumstances may exist where the dismissal of an employee may be justified notwithstanding the fact that a proper investigation was not carried out:

Case Law: Meath Co. Co. v. Creighton [1977]

Two employees are proved to go to the end of a remote field and one comes back seriously and bodily injured and complains to his employer that he was brutally assaulted by his fellow employee and the employer dismisses his fellow employee on the spot without waiting for any explanation.

This point is borne out by the 1977 Act which states that "all the circumstances" must be taken into consideration,¹² and that a failure to adhere to agreed procedures is a factor to be taken into account by the tribunal.¹³

What steps should an employer therefore take in order to guarantee that the dismissal of an employee was handled fairly at all times? The procedures that should be adopted by any employer

¹² Unfair Dismissals Act 1977, Section 6(1)

¹³ Unfair Dismissals Act 1977, Section 7 (2)(a)

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are not specifically listed; however such procedures can be gleaned from Statute, case law and principles of natural justice. These procedures may generally include the following:

- (a) Prior knowledge of rules/penalties
- (b) Investigation
- (c) Hearing
- (d) Warnings
- (e) Proportionate penalties

(a) Prior knowledge of rules/penalties

It is a fundamental principle of natural/constitutional justice that the employee has prior knowledge of the employer's rules and the consequences should the employee breach them. If an employee does not know of the rules how is he to know what type of conduct may be permissible and what type of conduct could lead to his dismissal?

If a rule exists which the employer has not applied rigidly, then if he should decide to enforce that rule he must first inform the employee of the change in practice e.g. employees strictly are only allowed 1 hour for lunch. A practice has grown – with the tacit approval of the employer – whereby the employees take an hour and 15 minutes for lunch. The employer cannot unilaterally decide to penalise employees one day where they take a late lunch.

Employees must be treated equally where the rules are breached i.e. the same punishment applies to all.

The 1977 Act provides that an employer shall, not later than 28 days after he enters into a contract of employment with an employee, give to the employee a notice in writing setting out the procedure which the employer will observe before and for the purpose of dismissing the employee.¹⁴ In addition, where there is any change to the disciplinary procedures, the employer must provide the employee with a written copy of the new procedures within 28 days of them taking effect.

Therefore, the employee is entitled to know, within 28 days of taking up employment, what procedures are to be followed in the event of the employee's dismissal. Prior knowledge of such procedures and the consequences in the event of their breach is of critical importance. An employee cannot be dismissed for breaching a rule where he was unaware of the existence of that rule in the first place.

Case Law: Harris v. PV Doyle Hotels [1978]

Claimant was dismissed for drinking on his employer's premises. The EAT established that it was not made clear to the employee that such drinking would result in a dismissal. The tribunal stated: There was a duty on management to make it clear beyond doubt to their employees that any 'house rules' such as the drinking in this hotel, the breach of which would result in automatic dismissal.

An employer may discharge his obligation in such matters by making it clear to the employee at the outset of his employment, what the rules are. The employer should make it clear also what the penalties are, should the employee breach any of the rules.

¹⁴ Unfair Dismissals Act 1977, Section 14(1)

In practice, many firms develop employee manuals and handbooks that are distributed amongst the employees who are advised to read them carefully. Should an employer adopt such a policy it would seem that he has discharged his duty.

A failure to provide and follow written grievance/disciplinary procedures can prove fatal to the employer when dismissing the employee.

Case Law: Horan v. Glanbia Meats Ltd. [2002] ELR 205

The claimant worked for the respondent for over 30 years. The respondent had no written disciplinary procedures but adopted a 'best practice' approach. The claimant was suspected of certain clocking offences. He was called to a meeting by the HR manager and was challenged about the offences. The claimant was not aware that this meeting was a disciplinary meeting. The claimant at first denied the accusations, but at a meeting the next day he admitted to the offences. He apologised but was dismissed for gross misconduct.

Held – There had been a three-week delay between the employer's discovery of the clocking offences and the action he subsequently took. The employer then had called the claimant to a meeting without explaining its subject matter. The employee had a 30 year blemish-free career with the respondent – the employer had acted unfairly in dismissing the employee in such circumstances. The term 'gross misconduct' was not defined in the legislation and will vary from case to case. When determining what amounted to gross misconduct, the reaction of the employer to the offence will be relevant.

(b) Investigation

Natural and constitutional justice demands that where any allegations of misconduct are made against an employee, the employer must fully and properly investigate them. If an employer simply acts on mere allegations and dismisses the employee, he shall be in breach of fair procedures and such a breach may render the dismissal unfair.

Case Law: Hennessy v. Read & Write Shop Ltd. [1978] UD 192/28

In determining whether the employer acted reasonably in dismissing the employee, regard will be had to:

- *The nature and extent of the enquiry carried out by the employer prior to the decision to dismiss the claimant, and*
- *The employer's conclusion following such enquiry that the claimant should be dismissed.*

Therefore, in determining whether the employer acted reasonably in investigating the allegations, the tribunal will have regard for the extent of the investigation. Secondly, having conducted an investigation, the courts will examine whether the decision of the employer, having regard to the evidence gathered, was reasonable or not.

The Unfair Dismissals Acts and perhaps other influences, place on the employer a duty to act fairly towards an employee when contemplating his dismissal. To discharge this duty an employer is advised to take all reasonable steps to investigate the allegation and assess the information upon which he will make his decision. In doing so he is directed towards any disciplinary procedure which might exist in his employment and in any event is required by natural justice to acquaint his employee of any allegations and the nature of same to give the employee the right to defend himself.

Such procedures were identified in:

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Case Law: Gearon v. Dunnes Stores Ltd. [1988] UD 367/1988

The right to defend herself and to have her arguments and submissions listened to and evaluated by the respondent in relation to the threat to her employment is a right of the claimant and is not the gift of the respondent or of this tribunal . . . As the right is a fundamental one under natural and constitutional justice it is not open to this tribunal to forgive its breach and accordingly the tribunal determines that the claimant was unfairly dismissed from her employment with the respondent.

As can be determined from the above cases, the employer is also under an obligation to conduct an extensive and fair investigation of the allegations made against the employee concerned, before taking any drastic action such as dismissal.

The Employee's Obligations

The accused employee is under a duty to assist the employer in his investigations. The employee cannot therefore “plead the fifth” and remain silent when asked questions by his employer during the course of any investigation.

Case Law: Farrell v. Minister for Defence [1984]

The court stated that “. . . to refuse any explanation either at the time when the incident occurred or subsequently when called upon in writing to do so, would in any view justify the employer or any third party in drawing the inference that the plaintiff had been involved in an attempted larceny of his property and accordingly was not trustworthy.”

Case Law: Crilly v. Rucon Ltd. [1979]

An employee was dismissed because of unexplained absences. He had however given medical certificates to his employer who had lost them.

Held – his dismissal was deemed unfair as the employer had not carried out a proper investigation to determine whether the employee had in fact produced the medical certificates.

Case Law: O'Neill v. RSL (Ireland) Ltd. [1990]

The employer failed to carry out a reasonable and proper investigation where he dismissed an employee for theft. He had believed the alibi of another employee simply because he had known him longer.

Case Law: Pearse Martin v. Blooms Hotel [1997]

The claimant was alleged to have assaulted a female employee. He bit a female employee on the neck. He was dismissed for serious misconduct. The claimant argued that the full charges were never made against him and that fair procedures had not been followed.

Held – the tribunal did not accept the argument that fair procedures had not been adhered to. It was clear from the evidence that the claimant knew exactly at all stages what he was accused of.

It is clear that an employer must conduct a reasonable investigation of any allegations made against an employee. When undertaking such an investigation the employer must lay all charges before the employee. After the conclusion of the investigation, the employer must make a reasonable decision based on the established facts before him.

Where a complaint is made by an employee against a fellow employee alleging some kind of intimidating conduct, then the employer should ensure that the alleged harasser does not continue

working with the complainant. While it may not be ideal, it is the better option for the employer to possibly allow the alleged harasser to take fully paid leave while the investigation is being conducted.

Case Law: Allman & McAuley v. Minister for Justice, Equality and Law Reform and the AG [2003] ELR 7

The plaintiffs were prison officers who were suspended from work initially with no pay and then with 75% pay after they were involved in an incident where a day release prisoner they were accompanying, returned to the prison alone. The suspension took place in 1996. An oral hearing was held re the matter in 1997 where it was decided that the plaintiffs should be dismissed. However, following legal advice which was of the view that the dismissal procedure was flawed, it was suggested that a complete rehearing of the case should take place in 2001 together with additional charges. All this while, the plaintiffs remained suspended. The plaintiffs sought an injunction preventing this rehearing from taking place. It was argued that the time delay was inexcusable and that many witnesses to the event were no longer in the jurisdiction. It was further argued that the fresh hearing was to be chaired by John Lonergan the governor of the prison and that he had a vested interest in the outcome of any such hearing.

Held – *The court found that the flaws exhibited in the disciplinary procedures could not be blamed on the plaintiffs. A suspension should only last as long as is reasonably necessary to carry out an investigation. The court rejected the plaintiffs' arguments that the governor sitting on the board was unfair. The length of the suspension meant that there was a risk of prejudice against the applicants, as they would be hampered in their defence of any new charges that might be levelled against them. The rehearing should be banned and the plaintiffs should be reinstated to their positions.*

(c) Hearing

The employer is under an obligation to offer the employee an opportunity to answer or deny any allegations made against him. Natural justice demands that the employee be given the opportunity to answer all allegations made and to question witness offering evidence against him. Therefore, any allegations made against the employee must be put before him in advance of any hearing, in order that he may prepare a defence and rebut any of the allegations made.

Case Law: Behan v. Autoglass [1983]

Held – it was unfair to dismiss an employee against whom complaints had been made, where the employee was not made aware of the complaints.

The right to a hearing also includes the right to have access to all relevant evidence available.

Case Law: Magham v. Janssen Pharmaceuticals BV [1984]

An employee was denied access to a report made on her by one of her superiors. This report claimed that the employee was not capable of performing the job as required.

Held – *the denial of access to this report was unfair and in breach of proper procedures.*

It is also very important to note that the employee is entitled to representation at any such disciplinary hearing.

Case Law: Devlin v. Player & Wills Ltd. (1978) UD 90/1978

An employee was not allowed to have a trade union official represent her at a hearing.

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Held – this was unfair particularly because the penalty if found guilty of the offence was so severe i.e. dismissal.

The employer must give the employee the opportunity of being heard. He must be given the opportunity to refute allegations made against him, if he so wishes. The employee is also entitled to all relevant information being offered as evidence against him. Finally, the employee is entitled to be represented at any such hearing if he so wishes.

(d) **Warnings**

Save, in the most exceptional circumstances, the employer is always under a duty to warn the employee that his conduct may lead to disciplinary action if it does not improve. Obviously, certain conduct may be so serious as to justify the immediate dismissal of the employee without warning.

The general view appears to be that failure to give warnings will not necessarily render a dismissal invalid, unless it can be shown that failure to give a warning would have influenced the result. In other words, failure to give a warning will render a dismissal unfair if it can be shown that had the warning been given the subsequent dismissal may not have resulted.

For example, an employee may be dismissed because of incompetence. However, if the employer did not give the employee the opportunity to improve by warning him of his conduct, then the dismissal may be deemed unfair. In that situation, a warning may have led to an improvement in the employee's work and his dismissal may never have occurred. The reasoning behind the giving of a warning has been explained as follows:

Case Law: O'Reilly v. Dodder Management [1978]

A warning should place the appellant under clear notice of his general or particular areas of deficiency, so as to enable him to rectify same, or if aggrieved, to make representations to his employer, either personally or through his trade union representative.

Case Law: Sharma v. Inland Revenue [1980]

To make sure that the employee concerned realises that unless he improves, he will be dismissed; so that he cannot say afterwards, "Well, I could have done better, if I had realised my job was at risk."

Case Law: Richardson v. H. Williams & Co. Ltd. [1979]

The claimant, a supermarket manager, was dismissed because of his poor work performance over a number of months. Complaints made against him included the claim that he did not regularly check the freshness of produce, authorising cheques while not following company procedures, etc.

Held – his dismissal was unfair. He was not given the opportunity to defend himself against the allegations. The court stated that an employee should have been given a warning regarding his performance. Where a justified warning has been given:

- *A reasonable time must be allowed within which to effect improvement*
- *A reasonable work situation must be provided within which the employee may concentrate on improvement*
- *If the employee does improve, then the warning given to him cannot be used as a ground for sacking him for other reasons.*

If an employer simply dismisses an employee because they have infringed a certain rule without giving that employee a second chance, then the dismissal may be deemed unfair. In some situations it is not possible to give such warnings i.e. serious misconduct. However, particularly in situations regarding work performance, it is important that the employer gives the employee a fair chance to improve.

(e) Proportionate Penalties

It is widely felt that the employer's last resort in any disciplinary action should be dismissal. Therefore, where the tribunal is of the opinion that the dismissal of the employee was an overreaction on behalf of the employer, the dismissal may be deemed unfair. The penalty i.e. dismissal, should reflect the offence.

Case Law: Mullen v. CIE [1980]

The dismissal of the employee because he worked for a rival of his employer during his holidays was deemed to be unfair. The penalty – dismissal – was not proportionate to the offence.

11. Burden of Proof

The 1977 Act provides that the dismissal of an employee shall be deemed to be an unfair dismissal unless there are substantial grounds justifying the dismissal.¹⁵

This is another important advantage introduced under the legislation in favour of the employee. The employee must simply establish that he had been dismissed. It is then for the employer to establish that his dismissal was justified.

Proving that one has been dismissed will not pose too much difficulty:

Case Law: Collins v. Madden [1987]

A farm hand refused to spray acid without protective clothing. He was told that if he did not do the work he could "take care of the gate".

Held – this amounted to a dismissal.

The legislation provides great protection to the employee and the employer must have substantial reasons for dismissing the employee. Not only must the employer show that he had good grounds for taking the action of dismissal he must also show that in general the decision was reasonable given the circumstances.

12. Unfair Dismissal and Fixed Term Contracts

The Acts also do not apply to the non-renewal of fixed-term contracts or specific purpose contracts, provided that the contract is in writing, signed by both parties and clearly states that the Acts do not apply.¹⁶

¹⁵ Unfair Dismissals Act 1977, Section 6(1)

¹⁶ Unfair Dismissals Act 1977, Section 2(b)

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Similarly, the Unfair Dismissals Acts do not apply to the dismissal of any employee, where the employee was informed on commencement of employment that their employment will terminate on the return to work of another employee who is absent on maternity leave, adoptive leave or carer's leave and the dismissal of the employee occurs for the purpose of facilitating the return to work of that other employee. Fixed-term or specific purpose contracts are generally issued to employees engaged to cover such periods of leave.

The **Unfair Dismissals (Amendment) Act 1993** provides that if a fixed term or specific purpose contract expires and the employee is offered another fixed term contract within 3 months, if the second contract is not renewed then the employer may have to justify the dismissal. The aim of this provision is to stop employers offering successive fixed term contracts, either with or without a break. This legislative change has greatly reduced the flexibility and use of fixed term contracts.

13. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled "Introduction to Employment Law". If an employee is successful in taking an action against his employer for unfair dismissal, the Adjudication Officer or Labour Court will issue a determination, which shall do one of the following:

(a) Re-instatement

This is the re-instatement of the employee to the position he held immediately before his dismissal took place, on the same terms and conditions which applied before the dismissal took place and the re-instatement will be deemed to have commenced on the day of the dismissal.¹⁷

Essentially the employee is returned to his old job, with no break in continuous service. It is effectively as if the dismissal never took place. The employee is entitled to any loss of earnings which occurred between the date of the dismissal and the date the case is heard. In addition, the employee is entitled to benefit from any improvements in terms and conditions of employment such as pay rises, which occurred during that period.

(b) Re-engagement

This is where the employee is re-engaged in the position he held immediately prior to the dismissal or re-engaged in another suitable position on such terms and conditions as are reasonable having regard to all the circumstances. Re-engagement generally takes effect from the date the decision is issued and the employee. While the WRC has discretion to award re-engagement from the date of dismissal, to include compensation for loss of earnings from the date of dismissal to the date of the hearing, re-engagement is generally only awarded from the date of the decision and the employee does not receive compensation for loss of earnings. This remedy is used in situations where the employee contributed to the dismissal, even though the dismissal was unfair.

(c) Compensation

Financial compensation of up to 2 years' pay shall be awarded where the employee has suffered a financial loss.¹⁸ This is the most widely awarded remedy, which may be given in addition to the other remedies or on its own. The award can cover actual and prospective loss (potential future loss). In calculating financial loss, payments to the employee under the Social Welfare Acts in

¹⁷ Unfair Dismissals (Amendment) Act 1993, Section 2

¹⁸ Unfair Dismissals (Amendment) Act 1993, Section 6

respect of any period following the dismissal, and payments under the Income Tax Acts arising by reason of the dismissal shall be disregarded.

Where no financial loss has been incurred, financial compensation of up to 4 weeks' remuneration may be awarded.

Where an employee is unfairly dismissed as a result of making a protected disclosure under the **Protected Disclosures Act 2014**, financial compensation of up to 5 years' pay can be awarded.¹⁹ If an employee has been dismissed as a result of making a protected disclosure and it is subsequently found that the investigation of the relevant wrongdoing was not the sole or main motivation of the employee for making the disclosure, the financial compensation may be reduced by up to 25%.²⁰

Case Law: McDonagh v Dell Computer Corporation [2003] UD 348/2002

The claimant worked as an engineer. He was the subject of a poor performance review by his new line manager in February 2001. The claimant subsequently became depressed and felt he could not face the changed work atmosphere. Towards the end of July 2001, the claimant agreed to take part in the company's voluntary separation programme and left the company. In early 2002, the claimant initiated an action under the Unfair Dismissals legislation. As a preliminary point, the tribunal found that notwithstanding the fact that the claimant's application was outside of the normal six-month period, it was satisfied that the claimant had developed an illness as a result of his poor performance review and his subsequent conditions of work and this fact prevented from giving notice of his claim within the six months. As an exception, he was entitled to bring his action.

Where ownership of the business that dismissed an employee is transferred to a new owner, any award for compensation may be made against the new owner.

The Acts do not provide for the award of legal costs or free legal aid for a person seeking the protection of the statutory bodies. However, a lot of these cases are now represented by solicitors and barristers and the employee will be responsible for the payment of same.

14. Compliance Notice

An inspector of the Workplace Relations Commission can issue a Compliance Notice to an employer for breaches of certain Acts. A Compliance Notice can be issued under the **Unfair Dismissals Acts 1977 to 2015**, where an employer:

- Fails to provide an employee with written notice, within 28 days of commencing employment, of procedures to be followed before dismissal, or
- Fails to provide an employee with written notice of any changes to these procedures within 28 days of the changes coming into effect, or
- Fails to notify an employee within 14 days of his request, the reasons for his dismissal.

See the Introduction to Employment Law chapter for further information on Compliance Notices.

¹⁹ Unfair Dismissals Act 1977, Section 7(1A), inserted by Protected Disclosures Act 2014

²⁰ Unfair Dismissals Act 1977, Section 7(2B), inserted by Protected Disclosures Act 2014

15. Taking a Civil Action using the Courts

A person who has been unfairly dismissed can of course wish to avoid the statutory bodies available to assert his rights and vindicate his claim for unfair dismissal by using the Courts to hear his allegation. This process is expensive and is one of the reasons for the existence of the WRC and the Labour Court. Simply put, an employee will approach a solicitor who will then lodge a claim in either the Circuit Court (€75,000 limit) or the High Court for a breach of contract/bullying harassment/personal injuries from the stress, etc. This course of action is a long and sometimes protracted one and professional legal advice is required if one finds himself in this position.

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General Data Protection Regulation 2016

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-

1. Main Provisions

The **General Data Protection Regulation 2016 (GDPR)** came into effect in all EU Member States on 25th May 2018 and replaced the existing **Data Protection Acts 1988 and 2003**. As GDPR is a Regulation as opposed to a Directive, GDPR has direct effect in all EU Member States, which in the main, results in the same set of data protection rules applying across all EU Member States.

The main provision of GDPR is to protect the privacy rights of individuals regarding the processing of their personal data. GDPR places obligations on Data Controllers (Controller) and Data Processors (Processor) to process personal data in a responsible manner and provides individuals with various rights in relation to the processing of their personal data.

GDPR applies to the processing of an individual's personal data by Controllers or Processors established in the EU, regardless of where the processing takes place and to the processing of personal data of an EU individual where it is processed by a Controller or Processor established outside the EU. Since the introduction of GDPR, the Data Protection Commission has the power to impose administrative fines where a Controller or Processor is found to be in breach of GDPR provisions.

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2. Definitions

Some of the main definitions which apply under GDPR are as follow:

Personal Data means any information relating to a living person who is, or can be, identified by that information, including data that can be combined with other information to identify an individual. This could include an identifier such as a name, identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.

For example, an employee or previous employee's name, address, PPS number, signature, staff number, date of birth, bank details, photo or image, application forms, performance reviews, emails, email addresses such as name.surname@company.ie, recordings of telephone calls, etc. all constitute personal data.

Special Categories (sensitive) of personal data means data which reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

Data Subject is the individual to whom the personal data relates to.

Processing means any operation or set of operations which is performed on personal data, whether or not by automated means, such as

- Obtaining, recording or keeping data,
- Organising or altering the data
- Retrieving, consulting or using the data
- Disclosing the data to a third party (including publication of the data),
- Erasing or destroying the data.

Controller means the person or organisation who determines the purposes and means of the processing of personal data. The purpose of processing data involves 'why' the personal data is being processed and the 'means' of the processing involves 'how' the data is processed.

Every employer is a Controller as he holds personal data on his past, present and prospective employees.

Processor means a person or organisation which processes personal data on behalf of the Controller.

For example, a payroll bureau is a Data Processor in respect of the personal data it processes for employees of a client. It is also a Data Controller in respect of its own employees.

An in-house payroll manager who processes his or her employer's payroll is neither a Data Controller nor a Data Processor. It is the employer who is regarded as the Controller, not the employee.

3. Principles relating to the Processing of Personal Data

The core principles relating to the processing of personal data under GDPR are as follows. Personal data shall be:¹

- Processed lawfully, fairly and in a transparent manner (**lawfulness, fairness and transparency**);
- Used for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes (**purpose limitation**);
- Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (**data minimisation**);
- Accurate and, where necessary, kept up to date. Every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (**accuracy**);
- Kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed (**storage limitation**)
- Processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (**integrity and confidentiality**).

There is an overall principle of accountability. Controllers are responsible for, and must be able to demonstrate, compliance with the principles as outlined above (**accountability**).

4. Lawfulness of Processing

In addition to complying with the principles as outlined above, the processing of personal data is only lawful if:²

- The individual has given consent to the processing, or
- It is necessary for the performance of a contract or to take steps at the request of the individual prior to entering into a contract, or
- It is necessary for compliance with a legal obligation to which the Controller is subject, or
- It is necessary to protect the vital interests of the individual, or
- It is necessary for carrying out a task in the public interest, or
- It is necessary for the legitimate interests of the Controller or a third party.

Of the above lawful basis for processing personal data, employers will primarily rely on the following grounds to ensure they are lawfully processing an employee's personal data:

(a) Compliance with a Legal Obligation

An employee cannot object to the processing of his personal data where the employer requires that data to comply with a legal obligation. For example:

- The **Taxes Consolidation Act 1997**³ and regulations made under the **Organisation of Working Time Act 1997**⁴ require an employer to keep records of an employee's name, address and PPSN.

¹ Article 5

² Article 6

³ Taxes Consolidation Act 1997, Section 988A

⁴ Organisation of Working Time (Records)(Prescribed Form and Exemptions) Regulations 2001 - S.I. No. 473/2001

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- The **Income Tax (Employments) Regulations 2018** requires an employer to make a Payroll Submission to Revenue each time an employee is paid and retain a record of these submissions for the previous 6 tax years. This submission must include the employee's PPSN.⁵ Where an employer does not hold an employee's PPSN, he must notify Revenue of the employee's date of birth.⁶
- The **Protection of Young Persons (Employment) Act 1996** requires employers to keep a record of the name and date of birth of each employee who is under 18 years of age for 3 years. The Act also provides that an employer must seek written permission from a parent or guardian before employing a person under 16 years of age.

Where an employer requires the personal data to comply with a legal obligation, the employee's consent is not required.

An employer should not seek a PPSN from a prospective employee. The employer should only seek the PPSN from an individual who was successful at the recruitment process and is taking up employment.

(b) Performance of a Contract or Potential Contract

The processing of an employee's personal data is lawful where the processing is necessary for the performance of a contract (e.g. contract of employment). For example, where an employee enters into a contract of employment with an employer:

- Which states that the employee will be paid by credit transfer, the employer will require the employee's bank details in order to pay the employee.
- Which requires an employee to contribute to a pension scheme, it will be necessary for the employer to provide the employee's details to pension administrator.
- Which provides certain benefits to an employee, for example medical insurance, it will be necessary for the employer to transmit the employee's personal details to the medical insurance provider.

(c) Consent

Consent from the data subject is another legal basis for processing an individual's personal data. However, from an employer's perspective it is the least preferred basis for processing personal data as the individual has the right to withdraw their consent at any time.

Where consent is used as the lawful basis for processing personal data, it must be:

- freely given,
- specific,
- informed and unambiguous, and
- the individual must be informed of his right to withdraw his consent at any time.

Obtaining consent requires a positive indication of agreement – it cannot be inferred from silence, pre-ticked boxes or inactivity.

Consent will not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment. Based on the Article 29 Working Party guidance, due to the nature of the employee/employer relationship, it is unlikely that an employee

⁵ Income tax (Employments) Regulations 2018, Regulation 10

⁶ Income tax (Employments) Regulations 2018, Regulation 17

can deny his employer consent to data processing without experiencing the fear or risk of detrimental effects as a result of a refusal. The Article 29 Working Party is made up of representatives of European Union Data Protection Authorities. It is unlikely that an employee would be able to respond freely to a request for consent from his/her employer, for example, to fill out assessment forms, without feeling any pressure to consent. Therefore, Article 29 Working Party deems it problematic for employers to process personal data of employees based on consent as it is unlikely to be freely given.

For much of such data processing at work, the lawful basis should not be the consent of the employees due to the nature of the relationship between employer and employee. However, this does not mean that employers can never rely on consent as a lawful basis for processing. There may be situations when it is possible for the employer to demonstrate that consent is freely given. For example:

- Where an employer is required to deduct a trade union subscription from an employee wages and transmit it to the relevant trade union, the explicit consent of the employee is required in this instance as data revealing trade union membership is a special category of personal data. In this situation the employee is free to cancel their trade union membership and the employer would cease processing the deduction from the employee's wages with no repercussion for the employee.
- An employer requires the consent of an employee to use biometric attendance system in the workplace. Except in unusual circumstances any employee who objects to using such a system should be allowed to use an alternative system which does not involve processing of biometric information.
- It may be possible for an employer to use consent as the legal basis for processing personal data of a prospective employee where he submits a CV in response to a job advertisement. It may also be possible for the employer to argue that the personal data on the CV was processed in order to take steps at the request of the individual prior to entering into a contract of employment.

Given the imbalance of power between an employer and its employees, employees can only give free consent in exceptional circumstances, when it will have no adverse consequences at all whether or not they give consent.

If consent is the legal basis relied upon to process personal data, employers must make sure it meets the standards required by the GDPR. If it does not, then employers should amend their consent mechanisms or find an alternative legal basis.

Note that consent must be verifiable, that individuals must be informed in advance of their right to withdraw consent and that individuals generally have stronger rights where you rely on consent to process their personal data. GDPR is clear that Controllers must be able to demonstrate that consent was given. Employer's should therefore review the systems they use for recording consent to ensure they have an effective audit trail.

Where the employee withdraws his consent, the employer must cease processing the relevant data.

Employers should consider reviewing their employment contracts and privacy notices to ensure that they have a legitimate basis in order to process employees' data other than relying on consent.

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5. Accountability

Data Controllers and Data Processors must demonstrate how they comply with data protection rules. As a result, Controllers and Processors should ensure that have robust data protection policies in place and that they are adhered to by all employees.

When determining the means of processing personal data, Controllers should implement appropriate technical and organisational measures to ensure data protection by design and default to ensure that only personal data which is necessary for each specific purpose is being processed.

Data Controllers and Data Processors will be required to keep a written or electronic record of their processing activities. This requirement will not apply to an organisation which employs fewer than 250 employees unless the processing is likely to result in a risk to an individual's rights or it involves the processing of special categories of data (e.g. data revealing trade union membership or the processing of biometric data for uniquely identifying an employee).

Regarding information being provided to an employer which reveals trade union membership, employers should be mindful of the reason this information is provided by an employee. In a recent audit by the Data Protection Commission (DPC), it was found that the information was provided on a special deduction form for the specific purpose of deducting union fees and paying them over and could not be used for any other purpose, and the DPC refused to accept the employer's argument that it could also be used for making deductions from an employee's pay when out on strike. Where an employer intends to use the information for this purpose it must be made clear to the employee at the outset (e.g. on an authorisation form which the employee is required to sign).

Where the processing of data, especially where it involves the use of new technology, is likely to result in a high risk to the data protection rights of an individual, the Controller is required to carry out a data protection impact assessment on impact of the envisaged processing activities, prior to carrying out the processing.

Make an inventory of all personal data you hold and examine it under the following headings:

- Why are you holding it?
- How did you obtain it?
- Why was it originally gathered?
- How long will you retain it?
- How secure is it, both in terms of encryption and accessibility?
- Do you ever share it with third parties and on what basis might you do so?

This is the first step towards compliance with the GDPR's accountability principle, which requires organisations to demonstrate (and, in most cases, document) the ways in which they comply with data protection principles when transacting business. The inventory will also enable organisations to amend incorrect data or track third-party disclosures in the future, which is something that they may be required to do.

6. Data Protection Policy

When collecting personal data, Data Controllers must provide the individual with the following information in a concise, transparent, intelligible and easily accessible form, using clear and plain language, at the time the data is being collected:⁷

⁷ Article 13

- The identity and contact details of the Controller,
- The contact details for the data protection officer (where applicable),
- The purpose of the processing as well as the legal basis for processing,
- The recipients of the personal data,
- Where applicable, the fact that the Controller intends to transfer the personal data to a third country and the appropriate safeguards in place,
- The period for which the personal data will be stored, or where this is not possible, the criteria used to determine this period,
- The existence of the right to request from the Controller access to and rectification or erasure of personal data, restriction of processing and the right to data portability,
- The right to withdraw consent where processing is based on consent,
- The right to lodge a complaint with the Data Protection Commission.

An employer may include the above information in its Data Protection Policy and make it available to employees. Where an employer outsources his payroll, the employer should make employees aware of the recipients of their personal data.

7. Data Retention Policy

GDPR requires Controllers to retain personal data for no longer than is necessary for the purpose for which it was obtained and introduced a requirement for Controllers to be able to demonstrate compliance with this requirement. Employers should have a data retention policy in place which indicates the period an employee's personal data will be retained. Employers should be mindful of their statutory obligations to retain records when formulating a data retention policy, some of which are outlined as follows:

Legislation	Records	Retention Period
Terms of Employment (Information) Acts 1994 to 2014	Written Statement of Terms of Employment	Duration of Employment + at least 1 year, or
Social Welfare Consolidation Act 2005		2 years from date of issue
National Minimum Wage Acts 2000 and 2015	Records to prove compliance with the Act – e.g. payslips	At least 3 years from the date they were created
Organisation of Working Time Act 1997 and Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations 2001	Employee's name, address and PPS number	At least 3 years from the date they were created
Protection of Young Persons (Employment) Act 1996	Employee's name, address and PPSN number	At least 3 years from the date they were created
Parental Leave Acts 1998 to 2019	Parental leave and force majeure leave records for each employee	8 years from the date they were created
Paternity Leave and Benefit Act 2016	Paternity leave records for each employee	8 years after paternity leave was taken
Carer's Leave Act 2001	Carer's leave records for each employee	8 years from the date they were created
Protection of Employment Acts 1977 to 2014	Collective Redundancy records	At least 3 years from the date they were created

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Taxes Consolidation Act 1997	Register of employees who receive a payment in any tax year to include name, address and PPS number; tax records, USC records, reimbursement of expenses, etc.	Current year + 6 preceding years
Safety, Health and Welfare at Work (General Applications) Regulations 2007	Records of accidents or dangerous occurrences	10 years from the date of the accident or occurrence

While employers are required to retain records to satisfy the above legislative requirements, employers will have to balance this with the GDPR requirement that records are not retained for longer than is necessary. For example, from a pension point of view, employers may be required to retain an employee's pay and contribution details for the lifetime of the individual and his or her dependent children. Where electronic records are held, this may include a copy of an employee's payslip. Similarly, employers require an employee's bank details to pay employees by electronic transfer. However, the bank details may be contained in a credit transfer report which will be held by employers as part of their tax records for the current year and the preceding 6 years, even though the employee may no longer be employed.

Under the **Employment Equality Acts 1998 to 2021**, an employee has 12 months to bring a discrimination case against an employer. For this reason, it is recommended that an employer retains a copy of a CV and any interview notes or notes relating to the recruitment process in respect of those applicants who were unsuccessful for a period of 12 months following the recruitment process.

Employers may also need to consider the timeframe available to an employee to present a case against an employer for any wrongdoing. The DPC advise against retaining records indefinitely in the event that something may happen. However, an employee has 6 years to bring a breach of contract case against his employer. Employers may consider retaining contracts of employment for a period of 6 years following any such breach occurring as a defence against any claim being made.

8. Obligations on Data Processors

GDPR imposes the following obligations on Data Processors:

- Not to engage a sub-processor without the Controller's prior written authorisation,
- Only process data in accordance with the instructions of the Controller,
- Delete or return all personal data belonging to the Controller at the end of the contract,
- To immediately notify the Controller of any data breach, and
- Comply with any request from the Data Protection Commission.

Under GDPR, where a Data Processor acts outside the authorisation of the Data Controller they can be held liable for any resulting breach of their obligations which could result in fines being imposed by the DPC.

Regarding the processing of a client's payroll, a payroll bureau should act on the instructions of the client. GDPR requires a legally binding data processing contract to be in place between the Data Controller (client) and the Data Processor (payroll bureau).

9. Data Processing Contracts

Controllers and Processors are required to enter into a legally binding contract governing the processing of personal data when a Processor is engaged to process personal data on the instruction of a Controller (e.g. where the processing of a payroll is outsourced to a payroll bureau or agent).

When engaging a Processor, GDPR obliges Controllers to only use Processors which provide sufficient guarantees to implement appropriate technical and organisational measures to comply with GDPR and to protect data subject rights. A Processor shall not engage another Processor without prior written authorisation of the Controller.

GDPR outlines the terms and conditions which must be included in a Data Processing Contract between a Controller and a Processor as follows:⁸

- The subject matter, duration, nature and purpose of the data processing;
- The type of personal data being processed;
- The categories of data subjects whose personal data is being processed;
- The obligations and rights of the Controller;
- That the Processor will only process personal data received from the Controller on documented instructions of the Controller (unless required by law to process personal data without such instructions) including in respect of international data transfers;
- That the Processor ensures that any person(s) processing personal data is subject to a duty of confidentiality;
- That the Processor takes all security measures required to protect personal data received from the Controller;
- That the Processor obtains authorisation from the Controller for any sub-processors the Processor may engage. The Processor must ensure that where a general written authorisation to engage sub-processors is obtained, the Controller can object in advance to each individual sub-processor to be appointed by the Processor;
- That any sub-processors engaged by the Processor are subject to the same data protection obligations as the Processor and that the Processor remains directly liable to the Controller for the performance of a sub-processor's data protection obligations;
- That the Processor assists the Controller by appropriate technical and organisational measures to respond to data subject rights' requests under GDPR;
- That the Processor assists the Controller to ensure compliance with obligations under GDPR in relation to security of data processing, notification of data breaches and data protection impact assessments;
- That, at the end of the data processing by the Processor and on the Controller's instruction, the Processor deletes or returns the personal data received from the Controller; and
- That the Processor makes available to the Controller all information necessary to demonstrate compliance with GDPR and that the Processor allows for and contributes to audits conducted by the Controller or a third party on the Controller's behalf.

There are several other provisions which Controllers and Processors may wish to include in Data Processing Contracts which are not mandatory for inclusion under GDPR, such as:

⁸ Article 28

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- Liability provisions (including indemnities),
- Detailed (technical) security provisions, and/or
- Additional cooperation provisions between the Controller and Processor.

If found in breach of GDPR, Controllers and Processors may be liable to fines and other penalties under the GDPR in addition to (potentially) being in breach of any Data Processing Contract to which they are a party.

10. Individual's Rights

An individual has a right to obtain a copy of any personal data kept on a computer or in a filing system by any person or organisation, including employers. This is known as a subject access request. Any additional details that may be necessary to enable the Controller to locate the personal data should be included (e.g. PPS number, staff number, etc.).

Subject access requests can be used by employees as a method of obtaining data in advance of litigation against his employer which they might not otherwise have been aware of.

Data Controllers are not permitted to charge individuals for making a subject access request. However, where it can be demonstrated by the Controller that the request is unfounded or excessive, especially if the requests are repetitive, the Controller can charge a reasonable fee for administration costs in providing the information or carrying out the request or the Controller can refuse to act on the request.

Access requests must be responded to without undue delay and in any event within 1 month of the request being received. This period may be extended by a further 2 months depending on the complexity and number of requests, however the individual must be informed of the extension within 1 month and the reason for the delay.

In addition to a right of access to personal data held by the Controller, the individual will also have the right to:

- Be made aware of the purpose of the processing,
- Be made aware of the categories of personal data being processed,
- Be made aware of the recipients to whom the personal data has been or will be disclosed,
- Be made aware of the envisaged period for which the personal data will be stored, or if this is not possible, the criteria used to determine that period,
- Rectification (i.e. to have any inaccurate data corrected),
- Erasure (i.e. to be forgotten) (e.g. where the data is no longer necessary in relation to the purpose for which it was collected, or the individual has withdrawn his consent where consent was used as the legal basis for the processing of the personal data, etc.). An employee cannot request an employer to erase data where the employer is required to retain it in order to comply with a legal obligation.
- Restriction of processing where the data is inaccurate, or the processing is unlawful,
- Be made aware of the source of the data where it was not collected from the individual,
- Data portability (i.e. the right to receive personal data in a structured commonly used machine-readable format and the right to have it transmitted to another Controller) where the processing was based on the consent of the individual or the processing is carried out by automated means.

Where a Controller has rectified or erased personal data, this must be communicated to any third party to whom the data was disclosed.

Individuals have the right to seek compensation for material and non-material damage which could result in an individual seeking compensation for distress or reputational damage, even where the individual does not suffer any financial loss.

A Data Processor can be held liable for the damage caused where it has not acted in accordance with the Regulations or it has acted outside the lawful instructions of the Controller i.e. depending who is at fault, Controllers and Processors can be held jointly or severally liable for the damage. Where a Controller or Processor pays compensation, they will be entitled to recover damages from the other party where the other party was partly to blame in relation to the infringement. Similarly, where a Controller or Processor proves that they were in no way responsible, they will be exempt from liability.

11. Data Breach

Some organisations were already required to notify the DPC if they incurred a personal data breach. However, GDPR introduced mandatory breach notifications for all Data Controllers.

Controllers must notify the DPC of any breaches immediately after becoming aware of the data breach, typically within 72 hours after becoming aware of the breach, unless the breach is unlikely to result in a risk to the rights and freedoms of the individual (e.g. where the data is anonymised or encrypted). Where the breach is not notified within 72 hours, it must be accompanied by the reason for the delay. In practice this will mean that most data breaches must be reported to the DPC.

Breaches that are likely to bring harm to an individual such as identity theft or breach of confidentiality must also be reported to the individuals concerned.

Employers should ensure they have the right procedures in place to detect, report and investigate a personal data breach.

Failure to report a breach when required to do so could result in a fine, as well as a fine for the breach itself.

12. Data Protection Commission

The **Data Protection Act 2018** provides for the establishment of a Data Protection Commission (DPC) to replace the Office of the Data Protection Commissioner as the State's data protection authority. The Government has the power to appoint up to 3 members to the Commission, with one person being appointed as the Chairperson where the Commission consists of more than one member.

The DPC is responsible for upholding the rights of individuals and enforcing the obligations upon Data Controllers and Data Processors as set out in GDPR.

Individuals who feel their rights are being infringed can complain to the DPC, who will investigate the matter, and take whatever steps may be necessary to resolve it. The DPC will help to secure an individual's rights:

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- With advice and information
- By intervening directly on behalf of an individual if he feels that he has not been given satisfaction
- By taking action (including fines) against those failing to fulfil their obligations.

Making a complaint to the DPC is simple and free but must be made using a standard complaint form (available from www.dataprotection.ie) giving details about the matter, i.e. clearly identify the organisation or individual being complained about, outline the steps taken to date and any response received from them. Copies of all correspondence as well as supporting evidence/material should also be provided. The DPC will then investigate the complaint and when the investigation is finished, it will advise of its decision in writing.

The DPC actively participates in the European Data Protection Board (EDPB). The EDPB consists of representatives from each European state. Their role is to ensure consistency of the application of the GDPR throughout the European Union by issuing guidelines, opinions and decisions.

13. Administrative Fines

The DPC have the power to directly impose fines for breaches of GDPR, without the need to refer the case to a Court. GDPR provide for 2 levels of fines as follows:

- Greater of €10m or 2% of global annual turnover which could be imposed for offences such as failing to:
 - Implement appropriate technical and organisational measures to ensure data protection by default,
 - Notify a security breach to the Data Protection Commission or the individual where applicable,
 - Co-operate with the Data Protection Commission,
 - Make processing records available to the Data Protection Commission when requested,
 - Appoint a data protection officer.
- Greater of €20m or 4% of global annual turnover which could be imposed for offences such as:
 - Failing to adhere to the core principles relating to data protection as outlined in section 3 above,
 - Unlawful processing of personal data. Where the processing is based on consent, the Controller must be able to show that the individual consented to the processing of his personal data,
 - A breach of the rules relating to the processing special categories of data,
 - Failing to provide the individual with the details relating to the Controller and failure to inform the individual of his rights,
 - Infringements relating to the transfer of data to a third country, and
 - Failing to comply with an order of the Data Protection Commission.

While GDPR provides for an upper limit of the level of fines, the DPC will have the discretion to decide on whether to impose a fine and the level of the fine which must be effective, proportionate and dissuasive, considering such matters as the gravity and duration of the offence.

14. Data Protection Officer

A Controller and Processor will be required to appoint a data protection officer in any case where:

- The processing is carried out by a public authority, except for the courts acting in a judicial capacity,
- The core activities of the Controller or Processor consist of operations which require regular and systematic monitoring of individuals on a large scale (e.g. a security company responsible monitoring cameras in public spaces),
- The core activities of the Controller or Processor consist of processing on a large scale of special categories of personal data (e.g. a hospital) or personal data relating to criminal convictions and offences.

The data protection officer must be suitably qualified and have expert knowledge of data protection law. The data protection officer may be an employee or external consultant. He must be able to:

- inform the Controller or Processor of their obligations,
- monitor compliance with the Regulations,
- assign responsibilities, raise awareness and train staff,
- provide advice in relation to any data protection impact assessment
- co-operate with the Data Protection Commission and act as a point of contact for the Commission.

The data protection officer must be provided with the necessary resources to carry out his duties. He must not be instructed regarding the exercise of his duties and shall not be dismissed for performing his tasks. He must report to the highest level of management. The data protection officer may perform other tasks, however, there should be no conflict of interests (e.g. there may be a conflict of interest if the data protection officer was also the IT Manager). The Controller or Processor must publish the contact details of the data protection officer and communicate them to the Data Protection Commission.

15. Data Protection Audits

Some interesting findings from recent data protection audits are as follows:

15.1 Aer Lingus: Disclosing Payroll Data

3 employees complained that information they had supplied to the company to enable them to deduct union subscriptions was used by the company to discriminate against them and deny them pay increases and staff privileges.

Aer Lingus had reached agreement with SIPTU for a pay increase in return for changes in work practice. The 3 employees were members of the IMPACT trade union. No agreement was reached with IMPACT and their members were not awarded the pay increase.

The employees complained that the data they had supplied was used to identify them as IMPACT members. The company said that following agreement with SIPTU, it had supplied them with a list of their members. This list was used to award the increases. The Commissioner found that no contravention of the Acts had taken place.

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15.2 Department of Education and Science: Disclosing Payroll Data

A group of teachers who were all part of the same trade union were engaged in industrial action against the Department of Education and Science. The Department decided to withhold pay from the teachers for days on which, arising from the industrial action, in their view the teachers were not performing their work duties. The teachers had previously returned a mandate authorising the Department to deduct union subscriptions and the Department used this information to identify members of the trade union.

Some employees complained that although they were members, they had in fact been working on the days in question.

The Department argued that under the terms of its register entry they were authorised to use the information for this purpose. The register entry stated that one of the reasons for holding personal information was for the “administrating of teaching staff for second level schools” and the deduction came under this heading.

The Commissioner found that the information was provided on a special deduction form for the specific purpose of deducting union fees and paying them over and could not be used for any other purpose. The Department’s argument was dismissed, and the complaint was upheld.

15.3 Circulating Advertising Material to Employees

An employee complained that his personal details were disclosed by his employer without his permission. He received marketing material about loan services from a bank in an envelope which contained his payslip. The envelope was personally addressed to him.

The employer stated that the standard method of informing employees about new payroll deduction facilities was to circulate material to employees from the company providing the service.

The Commissioner found that the use of payroll data by an employer to notify employees of new deduction facilities was acceptable. However, in this case, the employer did not notify the employees directly and had instead provided the employee’s name and address to the bank on adhesive labels which were used to directly target the employees. This was found to contravene the Acts and a direction was issued to the employer advising him to desist from the practice.

15.4 Employer Attempts to Use CCTV for Disciplinary Purposes

An employer had used CCTV images to compile a log that recorded the entry and exit pattern of 2 employees from their place of work. The employer notified the employees that they would be using this log at a disciplinary meeting to discuss potential irregularities in their attendance. The letter also informed them that the matter was potentially gross misconduct and could result in disciplinary action up to and including dismissal.

The employees complained that they had never been informed about the purpose of CCTV cameras and that there were no signs visible about the operation of CCTV. The commissioner contacted the employer and informed them that people whose images are captured on CCTV must be informed of the identity of the Data Controller and the purpose of processing the data. If the employer intends to use the data for staff disciplinary action, then the staff must be informed before the cameras are used for that purpose.

The employer accepted the views of the Commissioner and the disciplinary action against the 2 employees was dropped.

15.5 Employer Fails to Safeguard Employee's Medical Certificate

An employee worked for a catering company who was contracted to the Department of Defence. A Defence Force member notified the employee that her medical certificate was displayed on a notice board in the office of a manager in the catering company. The office was shared with a member of the Defence Forces.

The catering company stated that the certificate was placed on the manager's personal notice board behind several other documents. It was not on view and it was alleged that the third party who accessed the certificate entered the office without permission and would have had to deliberately seek it out. The catering company further stated that it was policy that all personal information relating to employees should be held securely in locked cabinets.

The company reminded its managers about their duties when handling personal information. They issued a letter of apology to the employee and made a donation to charity of the employee's choice.

15.6 HSE: Disclosing Payroll Data

An employee complained that the HSE had disclosed his salary details to his ex-wife on 2 occasions. The employee and his ex-wife went to court in relation to maintenance issues and during the hearing she provided exact details from the employee's payslip. During a subsequent review, his ex-wife produced a copy of the employee's P60 as well as salary details for the previous 4 months.

The HSE said that the payroll department had received several court orders directing them to make maintenance payments to the employee's ex-wife. It also stated that numerous queries regarding the payments were made by a firm of accountants on behalf of his ex-wife. A specific request was made to see a copy of the employee's most recent payslip showing the total amounts deducted to date. The HSE said that requests for constant updates regarding maintenance payments ultimately resulted in the employee's payslip being disclosed.

The Commissioner informed the HSE that the disclosure of the employee's personal data on 2 separate occasions was in breach of the Acts. The HSE acknowledged that personal data was disclosed to a third party without the consent or knowledge of the employee. They also apologised to the employee.

15.7 DSP: Disclosure of personal information to a 3rd party

A complaint was received from an employee who stated that during a hearing with the Employment Appeals Tribunal, her employer produced an Illness Benefit statement relating to her containing a lot of personal information including the number of child dependents. The DSP had apologised to the employee but she stated that the incident caused her considerable distress.

The employer had phoned the DSP and the information was emailed to him via a screenshot. The DSP stated that in situations where a statement is requested by an employer, the normal procedure is to issue the statement to the employee with a note informing the employee that the information was requested by the employer. The Data Protection Commissioner found that the DSP were in breach of the Acts by disclosing personal information to an unauthorised 3rd party.

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Employees (Provision of Information and Consultation) Act 2006

- 1. Main Provisions**
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 - 3. Establishing Information and Consultation Arrangements**
 - 4. Pre-Existing Agreements**
 - 5. Negotiated Agreements**
 - 6. The Standard Rules**
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-

1. Main Provisions

The **Employees (Provision of Information and Consultation) Act 2006** was enacted on 24th July 2006 and introduced for the first time in Ireland an obligation on employers to establish arrangements in the workplace whereby employers will inform and consult with employees in advance of certain organisational and structural changes in the workplace as well as issues impacting on employment or contractual relationships with employees.

Prior to this Act, the information and consultation rights of employees in Ireland were limited to specific situations (e.g. collective redundancies and transfer of undertakings) and those rights still apply.

2. Covered Employees

The Act applies to any business or organisation in the public or private sector, with 50 or more employees,¹ carrying out an economic activity whether or not for gain. For the purpose of this Act, temporary agency workers (i.e. those assigned by an employment agency to work for a hirer) are considered to be employees of the agency, not the hirer.

The workforce threshold of 50 employees or more is calculated based on the average number of employees employed in the organisation over a 2 year period (or a lesser period if the organisation has been in existence for less than 2 years). Employees can request information from the employer on the number of employees employed during this period (i.e. the 2 year period before the date the request is made) in order to see if the employer is within the scope of the Act and also to see how many employees are needed to make a valid employee request (see section 3 below). The employer must provide the employees with this information within 4 weeks of the date of the request.

¹ Section 4

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If the number of employees falls below 50 (based on the 2 year average), and remains below it for 12 months, any Information and Consultation Forum established under this Act may be dissolved at the request of either the employer or a majority of the employees, unless both parties agree to its continuation.

3. Establishing Information and Consultation Arrangements

Although the Act applies to any business or organisation with at least 50 employees, the right to information and consultation does not operate automatically. In order for an information and consultation arrangement to begin, it must be requested by at least 10% of the employees (subject to a minimum of 15 employees) **or** at least 100 employees. This is referred to as the “employee threshold”.

If employees make a written request for an information and consultation arrangement but do not meet the employee threshold, a further request cannot be made for 2 years. Requests for negotiations can be made directly to the employer or in confidence to the Labour Court. The request must be made in writing and give the names of the employees making the request and state the date of the request.

Parties are given 6 months from the time of commencing negotiations to agree an information and consultation arrangement. However, the period of 6 months can be extended by agreement of the parties. If the employer refuses to enter into negotiations within 3 months of receiving a written request from employees or the Labour Court then the Standard Rules will apply.

Rather than waiting on a request from employees, employers are free to take the initiative and enter into negotiations with employees with a view to setting up an information and consultation arrangement.

The Act provides for 3 types of information and consultation agreements: pre-existing agreements (which must have been existence before the employer came within the scope of the Act and must comply with the requirements of the Act), Negotiated Agreements and the Standard Rules. For employers entering into new information and consultation arrangements with employees, there are only 2 options, Negotiated Agreements or the Standard Rules.

It is possible to establish more than one agreement or more than one Information and Consultation Forum if it suits the particular circumstances and structure of the undertaking.

4. Pre-Existing Agreements

Prior to the introduction of the Act, some organisations already had information and consultation arrangements in place. The Act permits the continuation of these agreements once they are in compliance with the provisions of the Act. In order for an organisation to use a pre-existing agreement, it must have been in place before a certain date, as follows:

- (a) In organisations with at least 150 employees on or before 4th September 2006.
- (b) In organisations with at least 100 employees on or before 23rd March 2007.
- (c) In organisations with at least 50 employees on or before 23rd March 2008.

It is not possible for a pre-existing agreement to be put in place since 23rd March 2008.

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A pre-existing agreement must be:²

- In writing and dated,
- Signed by the employer,
- Approved by the employees (the approval process used must be confidential and capable of independent verification),
- Applicable to all employees to whom the agreement relates, and
- Available for inspection as agreed by the parties.

In addition, pre-existing agreements must include reference to the following:

- The duration of the agreement and any review procedures,
- The subject matter for information and consultation, and
- The method by which information is to be provided or consultation to be conducted (this must include reference as to whether information and consultation is to be provided directly to employees or through representatives - see section 8 below for further information on employee representatives).

Where a pre-existing agreement exists within an undertaking on or before the specified dates, the employer is not obliged to comply with a request from employees for negotiations. However, where a pre-existing agreement has expired for 6 months or more, employees may make a request for negotiations.

INMO, SIPTU & Psychiatric Nurses Association v HSE and IBEC – ICC/11/1

This case involved a dispute between the HSE and the unions in relation to reducing the pay of pre-registration nurses and midwives, while they were working on placements in their final year of training.

An instruction was issued to the HSE by the Department of Health to reduce the pay of the nurses as above. The unions argued that the reduction arose primarily out of submissions made by the HSE which canvassed the reductions. The unions contended that discussions clearly took place between the HSE and the Dept. and they were not party to them in clear breach of the Act. The union further argued that staff were not notified of the cuts as soon as the HSE became aware of them.

The HSE argued that they were not obliged to consult with the unions as although discussions had taken place with the Dept., no final proposals were in place. The decision to reduce pay was made by government and was not based on or influenced by any input from the HSE. They further stated that they became aware of the cuts from a circular issued by the Department of Finance on 21st December and engaged with the union immediately after the Christmas holidays. The cuts were due to take effect on 1st January.

The court found that the HSE had engaged in discussions with the Department of Health and had raised consideration for a reduction. The Department of Health had already decided prior to the letter to make reductions far in excess of what was raised by the HSE. The court found that the decision was taken by the government and not the HSE and therefore the HSE did not need to enter into negotiations with the unions.

In relation to notification of the cuts, the Court found that the HSE received a letter from the Department of Health on 13th December informing them of the cuts. This was 7 days before the

² Section 9

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circular. The court found this complaint to be well founded and recommended that if a similar initiative were to arise in the future then negotiations should take place.

5. Negotiated Agreements

The Act³ provides the employer and the employees and/or their representatives with the opportunity to devise their own tailor-made information and consultation agreement through negotiations. Employees who want to negotiate a tailor-made agreement with their employer must make a formal application to the employer as described above. Employers can also initiate negotiations with employees without being requested to do so.

Negotiated Agreements must:

- Identify the issues on which the organisation will inform and consult on,
- Relate to all employees,
- Set out the method and timeframe by which information and consultation is to be provided, including whether it is to be provided directly to employees or through employees' representatives),
- Set out the duration of the agreement and any renegotiation procedure,
- Be in writing and dated,
- Be signed by the employer,
- Be available for inspection as agreed between the parties, and
- Set out the procedure for dealing with confidential information.

A Negotiated Agreement must be approved by a majority of the employees (or employees' representatives) in writing, or the parties can agree another procedure to demonstrate approval. Whatever process is used, it must be confidential and capable of independent verification.

If the negotiation process is fully inclusive and employee representatives are fully engaged, it would be expected that the Negotiated Agreement would be approved by the employees.

If the Negotiated Agreement is not approved by the employees, the parties have the opportunity to re-enter negotiations with a view to amending the original draft and obtaining approval later. If approval cannot be obtained by the employees then the Standard Rules will apply to the undertaking after 2 years have elapsed.

At any time before a Negotiated Agreement expires or within 6 months after its expiry, the parties to the agreement may renew it for any further period they think fit.

6. The Standard Rules

The Standard Rules⁴ are essentially a fall-back position for setting up an information and consultation arrangement. The Standard Rules apply in the following circumstances:

- Where both the employer and employees agree to adopt the Standard Rules,
- Where the employer fails to initiate negotiations within 3 months of receiving a valid request from employees or the Labour Court, or

³ Section 8

⁴ Section 10, Schedule 1 and Schedule 2

- Where the parties have entered into negotiations but cannot reach agreement within the specified time limit of 6 months (this period of 6 months may be extended by agreement of the parties).

Under Pre-existing and Negotiated Agreements, both parties are free to agree their own arrangements subject to the appropriate conditions (as previously outlined) being met. If, however, the Standard Rules are adopted or apply, then the parties cannot agree their own arrangements and must follow the provisions which are set out in the Act.

The key objective of the Standard Rules is the establishment of an **Information and Consultation Forum**.⁵ Where the Standard Rules apply to an undertaking the employer has up to 6 months to comply with them.

6.1 Size and Structure of Forum

The Forum must be comprised of employees' representatives and have at least 3 but not more than 30 members. The employees' representatives must be employees of the employer and elected in accordance with the Act,⁶ or in the absence of elections, appointed by the employees. It is the employer's responsibility to arrange the election process.

6.2 Election of Employees' Representatives

The Act details the requirements for the election of employees' representatives to the Information and Consultation Forum for the purpose of the Standard Rules.⁷

The Act sets out who is entitled to vote in an election, namely an employee who is employed by the undertaking on the day on which the date(s) for an election of members of the Information and Consultation Forum is fixed and who is, on the election day or days, an employee of the undertaking.

An employee who is employed by the undertaking for a continuous period of not less than one year on the nomination day is eligible to stand as a candidate for election as a member of the Forum, provided that he or she is nominated by at least two employees or a trade union or excepted body with whom it is the practice of the employer to conduct collective bargaining negotiations.

Where the number of candidates on the nomination day exceeds the number of members to be elected to the Forum, a poll shall take place by secret ballot on a day or days to be decided by the returning officer and according to the principle of proportional representation.

The employer in consultation with existing employees shall appoint a returning officer. The cost of the nomination and election procedure shall be borne by the employer.

6.3 Rules of Procedure

The Forum must adopt its own rules of procedure, subject to some requirements. These include the right of the Forum to meet with the employer twice a year and the right to request an additional meeting with the employer in exceptional circumstances. Before any meeting with the employer, the Forum is entitled to meet without the employer concerned being present. Without prejudice

⁵ Schedule 1

⁶ Schedule 2

⁷ Schedule 2

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to confidential information provisions in the Act, the members of the Forum shall inform the employees of the content and outcome of the meetings of the Forum.

6.4 Competence

For the purpose of the Standard Rules, information and consultation includes:

- a) Information on the recent and probable development of the undertaking's activities and economic situation,
- b) Information and consultation on the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular where there is a threat to employment, and
- c) Information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by legislation dealing with transfer of undertakings and collective redundancies.

6.5 Practical arrangements for Information and Consultation

The employer must give information in a timely manner and with the appropriate content to enable the Forum, in particular, to carry out an adequate study and, where necessary, prepare for consultation.

Consultation must take place at the relevant level of management and representation, depending on the subject under discussion. The method, content and timeframe must be appropriate. Consultation must take place on the basis of information supplied by the employer and on the basis of the opinion which the employees' representatives are entitled to formulate; in such a way as to enable the Forum to meet the employer and obtain a response and the reasons for that response, to any opinion they might form; and with a view to reaching an agreement on decisions referred to at point (c) above that are within the scope of the employer's powers.

6.6 Expenses

The employer is obliged to pay expenses incurred in the operation of the Forum. The employer must provide the members of the Forum with any financial resources that are necessary and reasonable to enable them to perform their duties in an appropriate manner.

Nortel (Ireland) Limited Information and Consultation Forum v Nortel (Ireland) Limited

This case was referred to the Labour Court by an employee forum who argued that the employer failed to provide it with financial resources necessary to perform its duties.

The employer and the employees entered into an information and consultation forum and adopted the Standard Rules. Sometime later the company became insolvent. It was placed into administration in the UK which also extended to Ireland. Prior to the administration, part of the business was sold, and some employees were transferred to the new company.

The Forum sought funding from the employer to meet costs incurred in obtaining legal advice on employment related issues. The Forum contended that the funding was not just for legal costs, but they did not particularise what the funding was to be used for.

The employer agreed that they were required to provide funding to the Forum to enable it to perform its duties, but that they were not required to meet legal costs.

Employees (Provision of Information and Consultation) Act 2006

The Labour Court found that legal advice or representation is not necessary for the pursuance of industrial relations claims. It also found that pursuance of such claims falls within the range of duties which are ascribed to an information and consultation forum.

The Court also stated that the information the Forum required could have been obtained elsewhere without the need to incur legal costs and the claim by the Forum was rejected.

7. Employee Representatives

Employees' representatives must be employees of the undertaking, elected or appointed for the purposes of the Act.⁸ The employer is obliged to arrange for the election or appointment of representatives. Where it is the practice of the employer to conduct collective bargaining negotiations with a trade union or excepted body that represents 10% or more of the employees in the undertaking, the Act provides that employees who are members of that trade union or excepted body are entitled to elect or appoint from amongst their members one, or more than one, employees' representatives. The number of such representatives (if any) elected or appointed will be determined on a pro-rata basis with other elected or appointed representatives. The only place where the Act prescribes the number of representatives allowed is in relation to the Information and Consultation Forum under the Standard Rules provisions. Elsewhere, the parties can determine the overall number of representatives.

Employee representatives should be reasonably facilitated in carrying out their duties promptly and effectively which would include the following:

- Paid time off to prepare for and attend meetings,
- Provision of facilities (e.g. telephone, photocopying, email, etc.) to allow for sharing and consulting with employees, and
- Paid time off to attend training courses.

The Act prohibits an employer from penalising⁹ an employee representative for performing his or her functions in accordance with this Act. Penalisation includes:

- Dismissal
- Any unfavourable change in conditions of employment,
- Any unfair treatment (including selection for redundancy), and,
- Any other action that is prejudicial to his or her employment.

Any employee representative who has been penalised by his employer can submit a complaint to the Workplace Relations Commission (WRC). A decision of an Adjudication Officer shall do one or more of the following:

- a) Declare that the complaint was or was not well founded
- b) Require the employer to take a specific course of action
- c) Require the employer to pay the employee compensation as the Adjudication Officer considers to be just and equitable subject to a maximum of 2 years' pay.

Where penalisation involves the dismissal of the employee, the employee may take a case under this Act or the **Unfair Dismissals Acts 1977 to 2015**, but not both.

⁸ Section 6

⁹ Section 13

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8. Confidentiality

The issue of confidentiality is specifically addressed in the Act as Organisations may not wish to disclose confidential information (e.g. financial performance, strategy, etc.) to employees. The Act provides that any person who receives confidential information while participating in an information and consultation arrangement (e.g. an employee, an employee representative, an expert providing assistance, member of the Labour Court, etc.) is not permitted to disclose any confidential information to any third party except to employees when carrying out his duties under the Act. This duty of confidentiality continues to apply following the cessation of the employment or the person's involvement with the information and consultation arrangement.

Employers can refuse to disclose information where the disclosure is prohibited by other legislation.

9. Dispute Resolution

Disputes concerning:¹⁰

- Negotiations leading to a Negotiated Agreement or an agreement under the Standard Rules,
- The interpretation or operation of a Pre-Existing Agreement or a Negotiated Agreement,
- The interpretation or operation of the Standard Rules or the procedures for the election of employees' representatives, or
- The interpretation or operation of a system of direct involvement,

must go through the following stages in dispute resolution:

- Internal dispute resolution procedure (if any),
- Dispute referred to the Workplace Relations Commission (WRC),
- Referral to Labour Court for investigation only after the WRC certifies to the Labour Court that no further efforts on its part will resolve the dispute. The dispute may be referred to the Labour Court by the employer, or one or more employees and/or their representatives,
- Where the Labour Court makes a written recommendation which does not lead to a resolution of the dispute, the Labour Court may, at the request of an employer, or one or more employees and/or their representatives, and following a review of all relevant matters, make a written determination.

Enforcement

The Act¹¹ enables one or more of the parties to apply to the Circuit Court for an enforcement order regarding a Labour Court determination in relation to a:

- Dispute concerning the election of an employee representative
- Disputes outlined above, or
- A decision of an Adjudication Officer or a determination of the Labour Court.

The Circuit Court will issue an order where the terms of such a determination or decision have not been carried out within the period specified in the determination or decision or, where no period has been specified, within 6 weeks from the date on which the determination or decision is communicated to the parties. The Circuit Court, if it considers it appropriate to do so, may also direct the employer to pay interest on compensation awarded by the Adjudication Officer.

¹⁰ Section 15

¹¹ Section 17

Penalties and Offences

The penalties that may be applied under this Act are as follows:

- A Class B fine of up to €4,000 where a person fails to attend, give evidence or produce documents to the Labour Court,
- A Class B fine of up to €4,000 and/or up to 6 months imprisonment where a person knowingly makes a false statement to the Labour Court,
- On summary conviction, a Class B fine of up to €4,000 and/or up to 6 months imprisonment (on conviction on indictment, a fine of up to €30,000 and/or imprisonment for up to 3 years) for any of the following:
- Failure by the employer to provide details on the number of employees employed in the organisation,
- Failure by the employer to arrange the election or appointment of employee representatives,
- Disclosing confidential information to an employee or third party who is not subject to a duty of confidentiality under this Act,
- Failing to adhere to the processes outlined in the Act, such as those relating to establishing information and consultation arrangements, Pre-Existing Agreements, Negotiated Agreements, Standard Rules or the protection of employee representatives,
- Impeding or obstructing the work of an Inspector such as failing to produce records or producing incorrect records.

Where a person commits an offence following conviction, he shall be guilty of an offence for every day that the offence continues or is committed, which on summary conviction is liable to a Class E fine not exceeding €500, or on indictment a fine not exceeding €5,000.

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Safety, Health and Welfare at Work Acts 2005 to 2014

- 1. Introduction**
 - 2. Health and Safety Authority**
 - 3. Employers' Duties**
 - 4. The Safety Representative**
 - 5. Employees' Duties**
 - 6. Safety, Health and Welfare at Work (General Application) Regulations 2007**
 - 7. Work Related Stress**
 - 8. Penalisation**
 - 9. Redress Provisions**
-

1. Introduction

The **Safety, Health and Welfare at Work Acts 2005 to 2014** places responsibility for occupational health and safety on all employers. The Act takes a preventative approach to reducing accidents and ill health at work and sets out the main provisions for securing and improving the safety, health and welfare of people at work to include:

- Requirements for the control of safety and health at work
- Management, organisation and systems of work necessary to achieve those goals
- Responsibilities and roles of employers, the self-employed, employees and others
- Enforcement procedures needed to ensure that the goals are met.

2. Health and Safety Authority

The Health & Safety Authority (HSA) was established in Ireland as the national body with responsibility for securing health and safety at work under the **Safety, Health and Welfare at Work Acts 2005 to 2014**.¹ Information relating to Health & Safety is available on their website at www.hsa.ie.

The Health & Safety Authority monitors compliance with legislation at the workplace and can take enforcement action to include prosecutions.

- The promotion of good standards of health and safety at work,
- Inspection of all places of work and monitor compliance with health and safety laws,
- Investigation of certain serious accidents, causes of ill health and complaints,
- Carry out and sponsor research on health and safety at work,
- Publish codes of practice, guidance and information,
- Develop new laws and standards on health and safety at work.

¹ Part 5

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2.1 Enforcement of Legislation

The Health & Safety Authority may serve enforcement notices on employers who fail to comply with law. An Improvement Notice² gives a period of time for the matter to be resolved while a Prohibition Notice³ requires immediate cessation of the activity that has created the risk. The Health & Safety Authority may also apply to the High Court for an order prohibiting or restricting the use of a place of work.⁴

When prosecuted, the Courts may impose fines ranging from €4,000 to €3,000,000 or prison sentences not exceeding 2 years (or both) depending on the seriousness of the offence.⁵ The Health & Safety Authority also has the right to publish the names and addresses of those subjected to a Prohibition Notice, High Court Order or a penalty following a court conviction. The Act also provides for “on the spot” Class D fines of up to €1,000 for certain offences.

3. Employers’ Duties

Employers are primarily responsible for creating and maintaining a safe and healthy workplace and their duties under this Act include:⁶

- Ensuring the safety, health and welfare at work of all employees,
- Managing and conducting all work activities so as to ensure the safety, health and welfare of people at work including the prevention of improper conduct or behaviour likely to put employees at risk (e.g. “horseplay” and bullying at work).
- Designing, providing and maintaining a safe place to work that has safe access and exits, and uses plant and machinery that is safe and without risk to health.
- Prevention of risks from the use of any article or substance, or from exposure to physical agents, noise, vibration and ionising or other radiations.
- Preparing and revising emergency plans and procedures.
- Planning, organising, performing, maintaining and where appropriate revising systems of work that are safe and without risk to health.
- Providing and maintaining welfare facilities for employees at the workplace.
- Providing information, instruction, training and supervision regarding safety and health to employees,
- Co-operating with other employers who share the workplace so as to ensure that safety and health measures apply to all employees (including fixed-term and temporary workers) and providing employees with all relevant safety and health information.
- Providing appropriate protective equipment and clothing to the employees (at no cost to the employees).
- Appointing one or more competent persons to specifically advise the employer on compliance with the safety and health laws.
- Preventing risks to other people at the place of work.
- Ensuring that reportable accidents and dangerous occurrences are recorded and reported to the Health and Safety Authority.

² Section 66

³ Section 67

⁴ Section 68

⁵ Section 78

⁶ Section 8

3.1 Information provided to employees

An employer is obliged to provide information to each employee which must:⁷

- Be in a form, manner and language that the employee is likely to understand,
- Include workplace hazards and risks identified,
- Include the protective and preventative measures taken and the name of the safety representative as well as others named in the evacuation procedures,
- Before a fixed-term or temporary employee commences employment, provide information regarding:
- Potential risks, including any increased risks that the work may involve,
- Health surveillance,
- Special occupational qualifications or skills.

Individuals from other employments, engaged in the employer's premises must also receive this information.

The employer must also ensure that the safety representative has access to the risk assessment, any information regarding reportable incidents and accidents, and the protective and preventative measures.

3.2 Instruction, training and supervision of employees

An employer must ensure that all instruction, training and supervision provided to an employee must be in a form and language that is likely to be understood and have regard to an employee's capability in relation to safety, health and welfare.⁸ Employees must receive adequate safety, health and welfare training which must also include training in relation to specific tasks and the measures to be taken in the event of an emergency. Where an employee is exposed to a risk which is expressly provided for in the legislation, the employer must ensure that he is protected against any danger that specifically affects him. Any contractor who carries out work in the employer's premises is also entitled to receive relevant safety instructions.

Training must be provided to an employee:

- On recruitment,
- If he is transferred to another task,
- Where new or altered equipment or work systems are introduced, and
- Where new technology is introduced.

3.3 Emergencies

The employer is responsible for providing adequate plans and procedures to be followed and measures to be taken in the event of an emergency or serious and imminent danger.⁹ The plan should include the provision of first aid, fire-fighting and premises evacuation which must take into account the nature of the work and the size of the organisation. He must also set up contacts with the emergency services and appoint and train appropriate employees to carry out these plans.

All employees must be informed of any risks and the steps that have been put in place to protect them including:

⁷ Section 9

⁸ Section 10

⁹ Section 11

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- Not being required to resume work where there is a threat to their health and safety,
- Taking appropriate action to avoid the consequences of the danger,
- Instruct employees to stop work and remove themselves from the danger,
- Non penalisation of any employee who leaves the employers premises in the case of an emergency, and
- Restriction of access, to hazardous areas to employees who have received training,

3.4 Protective and Preventative Measures¹⁰

An adequate number of competent employees must be appointed by the employer and given adequate time and means to carry out any function relating to protecting employees. The employer must also arrange for co-operation between these competent persons and the safety representative.

Directors and senior managers carry particular responsibilities under the Act, if it can be shown that an offence committed was attributable to neglect or authorisation on their part. Every employer is obliged to carry out a risk assessment for health and safety hazards as follows:

Step 1 - Identify hazards

Employers must identify all hazards in the workplace, such as: slips, trips and falls; falling of persons or material from a height; manual handling of loads; exposure to dangerous moving parts on plant and machinery; mechanical handling; movement of vehicles and site transport; fire and explosion; use of hazardous substances; use of compressed air; exposure to harmful levels of noise; harmful vibration and radiation; hazards associated with electricity; entry into confined spaces; unsuitable lighting levels in the workplace; inadequate thermal environment (too hot or too cold); work with display screens and human factors (violence to staff, stress and bullying at work).

Step 2 - Assess the Risk

Once the hazard has been identified, the employer must assess the risk presented by this hazard. The employer is required to keep a written assessment, known as a risk assessment, of each hazard and the associated risk. The risk assessment must be reviewed and amended if there is any significant changes in the workplace or if it is no longer valid. Besmart (<https://besmart.ie/>) is an online tool prepared by the HSA for small businesses to prepare risk assessments and safety statements.

The risk assessment must:

- Address any significant hazards,
- Apply to all aspects of the work,
- Cover non-routine, as well as routine operations, such as occasional maintenance.

Risks may be categorised as low risk, medium risk or high risk; or have a more complex ratings structure.

An employer must ensure that health surveillance which is appropriate to any risk that may occur in the place of work is available to all employees. Where an employee's work involves a serious risk to his safety, health or welfare, employers must ensure that the employee undergoes a medical assessment to ascertain the employee's fitness to perform his duties.

¹⁰ Part 3

Step 3 - Select the Control Measures

When deciding what control measures to put in place, employers should have regard to the general principles of prevention:

- 1) The avoidance of risk.
- 2) The evaluation of unavoidable risk.
- 3) The combating of risk at source.
- 4) The adaptation of work to the individual, especially as regards design.
- 5) The adaptation of the place of work to technical progress.
- 6) The replacement of dangerous articles, substances or systems of work, with ones that are less dangerous.
- 7) Giving priority to collective protective measures over individual measures.
- 8) The development of an adequate prevention policy.
- 9) The giving of appropriate training and instruction to employees.

Step 4 - Write the Safety Statement

Every employer is obliged to have a written safety statement, based on the identification of the hazards and the risk assessment carried out; specifying the manner in which the safety, health and welfare at work of his or her employees shall be secured and managed. The written safety statement must specify the:

- a) Hazards identified and the risks assessed,
- b) Protective and preventive measures taken and the resources provided for protecting safety, health and welfare at the place of work,
- c) Plans and procedures to be followed and the measures to be taken in the event of an emergency or serious and imminent danger,
- d) Duties of employees regarding safety, health and welfare at work, including co-operation with the employer and any persons who have responsibility for safety, health and welfare at work,
- e) Names, job title or position held of the safety representatives.

Every employer must bring the safety statement, in a form, manner and language that are reasonably likely to be understood, to the attention of:

- a) Employees, at least annually and following any changes,
- b) New employees upon commencement of employment, and
- c) Other persons at the place of work who may be exposed to any specific risk.

Employers must review and amend the safety statement, if:

- a) There has been a significant change in the matters to which it refers,
- b) There is another reason to believe that the safety statement is no longer valid, or
- c) An inspector in the course of an inspection, investigation, examination or inquiry directs that the safety statement be amended within 30 days of the giving of that direction.

The safety statement must also be made available to all contractors providing services to the employer and a copy of the safety statement must be kept at or near the place of work.

3.5 Reporting of Accidents and Dangerous Occurrences

Regulations (S.I. 370 of 2016) came into effect on 1st November 2016 which updated the provisions regarding the reporting of accidents and dangerous occurrences to the HSA.

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Some of the key points in these Regulations in relation to employers include:

- Fatal accidents must be reported immediately to the HSA or the Gardaí and a formal accident report should be submitted to the HSA within 5 working days of the death.
- Non-fatal accidents which result in an employee being unable to carry out his normal work duties for more than 3 consecutive days (excluding the day of the accident but including weekends and any other non-working day) must be reported to the HSA within 10 working days of the accident. If an employee dies within 1 year of an accident it must be reported to the HSA again as a death even if it was previously reported as an accident.
- Non-fatal accidents at the place of work in respect of non-employees (e.g. a member of the public, subcontractors, etc.) must be reported where the accident results in the injured person being taken from the location to receive medical treatment in a hospital or other medical facility.

Only fatal and non-fatal injuries must be reported. Diseases, occupational illnesses or mental impairments are not reportable). Accidents occurring while commuting to and from work are not reportable. However, accidents occurring while driving on business duties are reportable. Dangerous occurrences (e.g. explosions, fires, collapse of buildings or equipment) must also be reported.

An online reporting system is available on the HSA website at www.hsa.ie

Where a fatal accident occurs in the workplace, employers, if they have control of the scene should discuss with a HSA inspector how the scene should be maintained. Access should be restricted and items should not be removed. Employers are permitted to make the scene safe.

Gardaí will ensure the scene is undisturbed until a HSA inspector commences an investigation.

Records are required to be kept for a period of 10 years from the date of the incident. Records can be kept in electronic format and a copy of the report submitted to the HSA will suffice.

4. The Safety Representative

Employees may select and appoint a co-worker as a safety representative or, by agreement with their employer, more than one safety representative, to represent them at the place of work on matters related to safety, health and welfare at the place of work.¹¹

Once a safety representative has been appointed the employer must set out with him a schedule for inspections to take place. The safety representative is responsible for carrying out safety inspections as per the schedule, or immediately in the event of an accident, dangerous occurrence or imminent danger or risk to the safety, health and welfare of any person.

Where appropriate the employer must take action where the safety representative has made representations to him. The safety representative must be allowed sufficient paid time off to attend any appropriate training. The employer must also inform the safety representative when a HSA inspection is taking place and give him a copy of any written confirmation that an Improvement or Prohibition Notice has been complied with.

¹¹ Section 25

5. Employees' Duties

All employees including full or part-time, permanent or temporary have the following duties under the Act.¹² They must:

- Comply with relevant laws and protect their own safety and health, as well as the safety and health of anyone who may be affected by their actions or omissions at work,
- Ensure that they are not under the influence of any intoxicant to the extent that they could be a danger to themselves or others, while at work,
- Submit to reasonable, appropriate testing, if reasonably required by the employer,
- Co-operate with their employer with regard to safety, health and welfare at work,
- Not engage in any improper conduct that could endanger their safety or health or that of anyone else,
- Attend training and undergo assessment, as appropriate, relating to safety, health and welfare at work or relating to the work carried out by the employee,
- Make proper use of all machinery, tools, appliances, equipment, substances, etc., which might endanger safety and health,
- Report to his employer as soon as practicable
 - (i) Any work being carried on, or likely to be carried on, in a manner which may endanger themselves or any other person,
 - (ii) Any defect in the place of work, the systems of work, any article or substance which might endanger themselves or any other person, or
 - (iii) Any contraventions of the Act which may endanger themselves or another person of which he is aware.
- Notify their employer (or his nominated medical practitioner) of any disease or physical or mental impairment that they become aware of, which could be a risk to themselves or others if they were to carry out their duties of employment.

An employee must not:

- Make misrepresentations to an employer regarding his level of training,
- Damage, misuse or interfere with anything which is provided for the safety, health and welfare of employees,
- Place at risk the safety, health and welfare of any person in connection with work activities.

6. Safety, Health and Welfare at Work (General Application) Regulations 2007

These Regulations apply to the majority of workplaces, and cover:

- Workplace and work equipment,
- Use of work equipment,
- Personal protective equipment,
- Manual handling of loads,
- Display screen equipment,
- Electricity,
- Work at height,
- Physical agents (e.g. noise, control of vibration at work),

¹² Chapter 2

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- Sensitive risk groups (e.g. protection of children, young persons, pregnant, post-natal and breastfeeding employees, night work and shift work),
- Safety signs and first aid,
- Explosive atmospheres at places of work.

The definition of a workplace includes an employer's premises and any other place that the employee has access to in the course of his employment, but does not include:

- Means of transport used outside the business or a place of work inside a means of transport,
- Temporary or mobile work sites, including construction sites,
- Extractive industries,
- Fishing boats,
- Fields, woods and land forming part of an agricultural or forestry undertaking but situated away from the undertaking's buildings.

While the above workplaces are excluded from the General Application Regulations, they may be subject to other specific regulations (e.g. construction sites are governed by **Safety, Health and Welfare at Work (Construction) Regulations 2013 and 2019**), or the HSA may have prepared a Code of Practice or other information for these workplaces.

The following are some of the more common provisions of the General Application Regulations.

6.1 Workplace and work equipment

The minimum temperature set for offices is 17.5° Celsius and for other sedentary work is 16° Celsius. Enclosed places of work must have sufficient fresh air or ventilation, and lighting. An employer must facilitate employees to sit rather than stand while working, where possible.

Access must be prevented to roofs or suspended ceilings which are made of fragile materials, unless the appropriate warning signs have been erected and the work can be carried out safely.

Employers must provide firefighting equipment, fire detectors and a fire alarm system which is properly maintained. All emergency exits and routes must be kept clear and should be clearly indicated.

Employers must ensure that all work equipment is fit for purpose and meets any required technical specifications and is inspected at routine intervals. Employees should receive adequate training to use the equipment and should be aware of any safety and health risks associated with using the equipment.

Appropriate personal protective equipment must be provided where risks at a place of work cannot be removed. This could include items such as hard hats, earmuffs/noise protectors, goggles/shields, dust masks, gloves, safety boots, etc.)

6.2 Manual Handling

Manual handling of loads is defined as any “transporting or supporting of a load by one or more employees and includes lifting, putting down, pushing, pulling, carrying or moving a load, which involves risk, particularly of back injury, to an employee”.¹³

¹³ Regulation 68

With regard to manual handling of loads by employees, an employer is obliged to:

- Take appropriate measures, to include the provision of mechanical equipment, in order to avoid the need for the manual handling of loads by employees,
- Take appropriate measures to reduce the risk involved where manual handling of loads by employees cannot be avoided,
- Organise workplaces so as to make manual handling as safe as possible, and
- Ensure that employees receive a general indication or exact information where possible, on the weight of each load.

6.3 Display Screen Equipment

Employers must ensure that any alphanumeric or graphic display screen equipment (primarily computer screens) which is habitually used by an employee does not pose a risk to the employee. Employers are required to evaluate the health and safety of all employees' workstations with particular reference to eyesight, physical difficulties and mental stress. If any risks are identified, steps must be taken to control those risks.

An employee's daily work should be planned so that time spent using a display screen is periodically interrupted by breaks or other work activities. Employers must ensure that an eye test is available to every employee before commencing display screen work, at regular intervals thereafter and if an employee experiences visual difficulties due to display screen work. Employers are required to provide corrective lens if required for the purpose of the employees work.

6.4 Sensitive Risk Groups

An employer must carry out a risk assessment before employing a child or young person or whenever a change occurs in the workplace which could affect a child or young person. The risk assessment should cover aspects such as the child or young person's lack of experience, absence of awareness of risks or lack of maturity. An employer is also required to assess the risks involved for a pregnant, post-natal or breastfeeding employee and take any preventative measure to ensure the safety and health of such employees. An employer should not require an employee to carry out night work during pregnancy or during the 14 week period following childbirth (26 weeks following childbirth in respect of a woman who is breastfeeding), if certified by a medical practitioner. If the employer cannot transfer the employee to daytime work, the employee should be granted health and safety leave.

6.5 Safety Signs and First Aid

An employer must provide safety signs at work where risks cannot be avoided. Signs must meet the technical specifications as outlined in the Regulations (e.g. prohibition signs should be round and warning signs should be triangular).

Employers are obliged to provide and maintain first-aid equipment which is adequate to the place of work. A person, or persons trained and qualified in first aid must also be appointed. An employer is obliged to assess the requirement for providing a first aid room, taking in to account the size of the organisation, the type of work and the frequency of accidents. The details of the first aid provisions including the name of the first-aider must be included in the Safety Statement.

The names, addresses and telephone numbers of local emergency services must be displayed at each place of work.

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7. Work Related Stress

Stress is not an illness, but is our body's reaction to excessive pressure. Employees who are under excessive pressure or stress over a long period of time can develop a physical or mental illness.

The most common signs of stress are:

- Headaches, indigestion, aching muscles,
- Disturbed sleep and fatigue,
- Change in appetite, increase in alcohol consumption, smoking, or drug taking,
- Loss of concentration, shortened temper, loss of self-esteem, and feelings of a lack of calm.

The main causes of work related stress are:

- *Demands*: workload, work pattern and work environment,
- *Control*: how much say a person has in the way he does his work,
- *Support*: encouragement and resources provided by the employer, line management and colleagues,
- *Relationships*: promoting positive working relationships to avoid conflict and dealing with unacceptable behaviour,
- *Role*: ensuring employees understand their role in the organisation and ensuring there are no conflicting roles,
- *Change*: how change is managed and communicated in the workplace.

Where work related stress is an issue it is suggested that employers gather information as part of their risk assessment in order to identify if stress is a problem in their workplace. Relevant information should include sick leave absences, employee turnover, exit interviews, performance appraisal and return to work interviews. It is essential to develop ways in which employees may voice their concerns such as the following:

- Creating an environment where employees are encouraged to talk both formally and informally,
- Reminding employees of alternative routes for raising their concerns i.e. trade union representative, health and safety representative, human resources personnel or occupational health officer,
- Encourage employees to visit their GP if they are concerned about their health,
- Introduce mentoring and other forms of co-worker support,
- Provide counselling services.

In relation to work related stress, employers must include the following additional requirements:

- Consult with employees and their representatives to identify problem areas,
- Take action to address these problems,
- Commit to review action plans.

8. Penalisation

The Act prohibits an employer from penalising or threatening to penalise an employee on the grounds that he:¹⁴

¹⁴ Section 27

- Has acted in compliance with the relevant statutory provisions,
- Has performed any duty or exercised any right under the relevant statutory provisions,
- Makes a complaint or representation to his or her safety representative or employer or the Authority, as regards any matter relating to safety, health or welfare at work,
- Gives evidence in enforcement proceedings,
- Performs a function as a safety representative, or an employee appointed to perform such functions, or
- In circumstances of danger, which he reasonably believed to be serious and imminent, and which he could not reasonably have been expected to avert, left his place of work, or refused to return to his place of work.

Penalisation in relation to an employee includes:

- Suspension, Lay-off or dismissal of the employee, or the threat of any of these actions,
- Demotion, or loss of opportunity for promotion,
- Transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- Imposition of any discipline, reprimand or other penalty, including a financial penalty, and
- Coercion or intimidation.

9. Redress Provisions

The complaints procedure for this Act is dealt with in the chapter entitled “Introduction to Employment Law”. Where an employee is successful in taking an action against his employer, a determination of an Adjudication Officer shall include one or more of the following:

- Declare that the complaint was or was not well founded,
- Require the employer to take a specific course of action, or
- Require the employer to pay the employee compensation of such amount as is just and equitable having regard to all the circumstances.

CHAPTER 61

WRC Inspections

- 1. Introduction**
 - 2. Reasons for the Inspection**
 - 3. Notification of Inspection**
 - 4. Communication**
 - 5. Preparing for the Inspection**
 - 6. Location of the Inspection**
 - 7. Employer's Checklist**
 - 8. Conduct of the Inspection**
 - 9. Examining the Records**
 - 10. Interviewing Employees**
 - 11. Outcome of the Inspection**
 - 12. Complaints Procedure**
-

1. Introduction

The Workplace Relations Commission (WRC) is an independent, statutory body which was established on 1st October 2015. The WRC seeks to achieve a culture of compliance with employment law by informing employers and employees of their respective responsibilities and entitlements.

The WRC carry out inspections of employer's records to ensure compliance with employment law. Maintaining the correct records and making them available to a WRC Inspector helps to quickly establish if the employer is compliant. If areas of non-compliance are identified the Inspector will work with the employer to resolve them. The Inspector will aim to make the inspection process as simple as possible and take up the minimum of an employer's time. Employers are advised to have their employment records available and up to date at the time of inspection.

2. Reasons for the Inspection

Inspections can be initiated for a number of reasons, including:

- In response to complaints received of alleged non-compliance with relevant employment legislation,
- As part of a compliance campaign focusing on compliance in a specific sector or piece of legislation, or
- Routine inspections.

In general, the reason as to why a particular inspection is taking place is not given to employers. This ensures that:

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- All inspections are carried out in the same manner irrespective of the reason for the inspection and the employer is presumed to be compliant unless evidence to the contrary is found,
- A complainant is protected from potential victimisation, and
- The employer is protected from vexatious victimisation accusations.

In the following specific circumstances, a WRC Inspector will inform an employer that there has been a complaint. Where:

- There is a repeat inspection within 6 months of the first inspection as a result of a complaint received subsequent to the first inspection,
- A complainant's name is not on any records,
- An employee asks an Inspector to do so,
- An inspection is on foot of a request to enforce the decision or determination of an employment rights body.

3. Notification of Inspection

Employers generally receive advance notification of an inspection. The employer receives an appointment letter stating the proposed date and time for the inspection. If the employer has a valid reason as to why the inspection cannot be carried out at the appointed date or time he should contact the Inspector to arrange a suitable alternative date and time.

The Inspector may call unannounced in some instances. This generally arises in relation to compliance with the **Protection of Young Persons (Employment) Act 1996**.

4. Communication

All correspondence received from the WRC will contain the Inspectors direct telephone number and email address. If an employer has any queries regarding the proposed inspection he should contact the Inspector directly. WRC Inspectors are required to respond to any written correspondence within 10 working days from the date of receipt and to return phone calls within 2 working days.

If an employer has chosen to be represented by an accountant or solicitor, they will receive the same information as the employer. Where employers would like the WRC deal with a representative they need to complete a Form of Authority which is available from the Inspector. This is to confirm that the WRC can disclose information to the third party.

5. Preparing for the Inspection

An employer should ensure that all employment records required by law are up to date and available on the day of the inspection. The employer will receive a template with a number of questions and this should be completed before the Inspector arrives or have the information available in a similar format.

It is the employer's responsibility to cooperate with the inspection process and to provide information, as appropriate, in order to assist the Inspector in making a determination on the employer's compliance.

6. Location of the Inspection

Employers are required to keep their employment records at the place of employment. In general, this is where the inspection will take place. Should the employer wish to have the inspection carried out elsewhere, he should contact the Inspector who will consider all reasonable requests to carry out the inspection at another location.

An Inspector will not enter a private residence without the householder's consent. An employer should advise the Inspector in advance if the inspection is to be carried out in a private residence.

7. Employer's Checklist

In the majority of cases, employers who can provide all of the following information will meet their legal obligations in relation to record keeping, provided the records are maintained and presented for inspection in an appropriate format and are capable of being verified by the Inspector:

- Their employer's registration number with the Revenue Commissioners
- A list of all employees, including full names, address and PPS numbers
- Dates of commencement and if relevant, dates of termination of employments
- Five core terms of employment for each employee
- Written terms of employment for each employee
- Employees' job classification
- A record of annual leave and public holidays taken by each employee
- Hours of work for each employee (including start and finish times)
- Payroll details including gross to net, rate per hour, overtime, deductions, commission, bonuses and service charges, etc.
- Evidence that employees are provided with payslips
- A register of any employees under 18 years of age
- Details of any board and lodgings provided
- Employment permits for non-EEA nationals
- The completed template sent with the appointment letter or the same information available in a similar format.

To assist employers with their record keeping responsibilities, the WRC has published an employer record log which contains templates which will help an employer to keep the necessary records relating to working time as described above.

The templates, for the most part, are not statutory, but the information recorded in them is required to be maintained by the employer and if an employer were to use any of the templates they would be regarded as meeting their statutory obligations.

The log can be accessed on the WRC website at: <https://www.workplacerelations.ie/en/what-we-do/wrc-events/employers-record-log1.pdf>.

8. Conduct of the Inspection

Prior to the commencement of the inspection, the Inspector will identify himself, produce his warrant of authorisation and explain the purpose of the investigation together with the legislative basis upon which he is acting.

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Initially the Inspector will carry out an interview with the employer or his representative. The Inspector will then request the relevant records for inspection. After inspection of the records and verifying calculations, the Inspector will then interview a sample of employees. This is usually followed by a further meeting with the employer or representative to inform them of any preliminary findings.

If the Inspector is satisfied that the employer is compliant with the relevant employment law, the Inspector will inform the employer or his/her representative that a letter will issue, concluding the inspection.

If potential breaches are identified during the inspection the Inspector may need to ask the employer further questions. The Inspector may at this stage caution the employer. The Inspector may use words to the effect that:

"I must inform you that you are not obliged to say anything unless you wish to do so. However, anything you do say will be taken down and may be given in evidence".

This is done to protect the employer's right not to incriminate himself by something he might say.

9. Examining the Records

A key element of ensuring compliance is the maintenance of records and it is a key focus area of the WRC. Lack of compliance with statutory record keeping is a common breach detected by Inspectors.

Generally, the Inspector starts the inspection by examining a sample of original records over a period of one year prior to the inspection date. The Inspector will then determine whether further records need to be examined within the previous 3 years. If the records do not indicate any breaches of employment law, the Inspector will verify this with employee interviews. The Inspector will then advise the employer accordingly and the case will be closed.

Inspectors are permitted to:¹

- Enter any premises where he has reasonable grounds to believe that it has or is being used as a place of employment or that employment records are being kept there, (**Note:** An inspector can only enter a dwelling with the consent of the occupier or pursuant to a warrant issued by the District Court),
- Inspect and take copies, of any books, documents or records,
- Remove any books, documents or records in order to copy them, (**Note:** Where records are removed the employer will be given a receipt and they will be returned within 15 days. This generally only applies where an employer does not have access to a photocopier),
- Require an employer to disclose his employer's registration number and require an employee to disclose his PPSN,
- Require any person at the place of work to provide information and assistance as he may reasonably require, including the production of books, records and other documents, and
- Interview any person he believes to be (or have been) an employer or employee and require that person to answer questions and give a declaration as to the truth of those answers.

¹ Workplace Relations Act 2015, Section 27

Any person who obstructs or interferes with an Inspector, fails or refuses to comply with a request for information, fails to answer questions, or who provides false or misleading information is guilty of an offence, which:

- (a) On summary conviction, could result in a Class A fine of up to €5,000 or imprisonment for a term not exceeding 6 months, or both,
- (b) On conviction on indictment, could result in a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years or both.

An Inspector may be accompanied by other inspectors from the Department of Social Protection, the Revenue Commissioners or by members of An Garda Síochána.

10. Interviewing Employees

Inspectors are permitted to interview a sample of employees in order to check accuracy of the employer's records and information provided by the employer during the inspection. Inspectors are permitted to interview employees without the permission of their employer, however, Inspectors will generally ask for employers consent to interview employees on the premises. If an employer does not want the employees interviewed on the premises, or if he feels it is unsuitable to carry out interviews on the premises, they may be conducted off site and outside of working hours. If interviewing the employees is not possible or appropriate, the Inspector may issue employee questionnaires in the post to the selected employees.

11. Outcome of the Inspection

11.1 Compliance is Evident

Where the records are available and demonstrate compliance with employment law and this is verified through employee interviews, the inspection is carried out efficiently with minimal disruption. The Inspector will issue a letter concluding the inspection and the case is closed.

11.2 Minor Non-Compliance is Detected

Where Inspectors encounter minor breaches they will ask the employer to rectify them. When the Inspector is satisfied that these breaches have been rectified, the case is then closed.

11.3 Non-Compliance involving Underpayment of Wages

If the Inspector has reason to believe that employees have been paid less than the minimum amount provided by law, he will seek to recover unpaid wages for all employees, including former employees, in respect of whom underpayments have been identified. Unpaid wages will be sought for the preceding 3 years from the date of the inspection. The employer will be asked to calculate the unpaid wages due to the employees and these calculations will be checked by the Inspector, who will seek to have them paid to the employees as soon as possible. An Inspector will not accept a compromise payment or negotiate away any part of an employee's legal entitlements.

All employers making good the underpayment of wages are required to submit the standard Unpaid Wages Payment Form together with evidence that the appropriate amount has been paid to the employee. In the majority of cases, where all the unpaid wages are paid, no further action is taken and the case is closed.

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11.4 Serious Non-Compliance and/or Non-Cooperation

Legal sanctions (e.g. Compliance Notice, Fixed Payment Notice and/prosecution) may be imposed on non-compliant employers who refuse to comply with the law, fail to co-operate with the inspection process and/or who have been found repeatedly in breach of the law.

Decisions about prosecuting an employer for breaching employment law are based on a consistent, proportionate and fair assessment of the seriousness of the alleged breach. Mitigating factors such as the level of cooperation, previous compliance history, whether breaches have been rectified, whether employees have received redress for unpaid wages or other entitlements will be taken into account.

11.5 Sharing of Information with other State Bodies

The WRC has statutory powers to share information with other State Bodies, primarily the Department of Social Protection and Revenue. The WRC may also undertake joint investigations with these bodies. Information sharing or joint investigation generally takes place where there is an apparent risk of non-compliance across all 3 bodies or where the employer refuses to co-operate with, or provide records to, any one of the bodies.

12. Complaints Procedure

If anyone considers that a member of staff of the WRC dealt with them other than in a professional, fair or impartial manner, or is concerned about any aspect of the service received from the WRC, they should advise the person concerned of their dissatisfaction. If the matter is not resolved, a formal written complaint should be made by contacting the appropriate Customer Services Officer, outlining the details of the complaint. Contact details for Customer Services Officers can be found on the WRC website at: https://www.workplacerelations.ie/en/contact_us/customer-services-complaints-procedure/

The complaint will then be examined, recorded and a reply will be issued within 15 working days or, where this is not possible, an interim reply will issue explaining the position and advising when a detailed response will issue. If the complainant is not satisfied with the response, a further complaint can be made within 15 days of the initial response. This complaint will be assigned to the Divisional Complaints Officer who will endeavour to respond within 15 days. If the complainant is still not satisfied, any further complaints will be referred to the Director General of the WRC.

CHAPTER 62

Collective Agreements

- 1. Joint Labour Committees and Employment Regulation Orders**
 - 2. Registered Employment Agreements**
 - 3. Sectoral Employment Orders**
 - 4. Contract Cleaning Industry**
 - 5. Security Industry**
 - 6. Childcare Sector**
 - 7. Construction Industry**
 - 8. Mechanical Engineering Building Services Contracting Sector**
 - 9. Electrical Contracting Sector**
-

1. Joint Labour Committees and Employment Regulation Orders

The purpose of a Joint Labour Committee (JLC) is to regulate conditions of employment and set minimum rates of pay for employees in certain business sectors by means of Employment Regulation Orders (EROs).

A JLC is established by a statutory order of the Labour Court under the **Industrial Relations Act 1946**. It is an independent body made up of equal numbers of employer and worker representatives appointed by the Labour Court, with a chair appointed by the Minister for Enterprise, Trade and Employment.

A trade union, an organisation representing the workers or employers involved, or the Minister can apply to the Labour Court to set up a JLC.

The **Industrial Relations (Amendment) Act 2012** which reformed the JLCs' wage-setting mechanisms, came into force in August 2012. The Act provides for the Labour Court to adopt an ERO drawn up by a JLC. The ERO is then given statutory effect by the Minister for Enterprise, Trade and Employment.

The main provisions of the Act include:

- JLCs have the power to set a basic adult wage rate and 2 additional higher rates,
- Employers may seek exemption from paying ERO rates due to financial difficulty,
- JLCs no longer set Sunday premium rates,
- When setting wage rates JLCs have to take into account factors such as competitiveness and rates of employment and unemployment.

The Labour Court is required to review JLCs every 5 years and make recommendations to the Minister. The latest review was carried out by the Labour Court in April 2018 with the previous review taking place in 2013. Currently there are 9 JLCs in existence as follows:

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1. Agricultural Workers
2. Catering
3. Contract Cleaning
4. Hairdressing
5. Hotels
6. Retail, Grocery and Allied Trades
7. Security Industry
8. Early Learning
9. English Language Schools

Of these JLCs, only 3 currently have an ERO, namely Contract Cleaning, Security Industry and Early Learning and Childcare. Details of the EROs in these sectors are outlined below.

An ERO sets the minimum rates of pay and conditions of employment for workers in a business sector. Employers in that sector are obliged to pay wage rates and provide conditions of employment not less favourable than those set out in the ERO.

A notice must be posted up in the place of employment regulated by an ERO setting out the statutory rates of pay and conditions of employment. Any breaches of an ERO may be referred to the Workplace Relations Commission.

2. Registered Employment Agreements

The **Industrial Relations (Amendment) Act 2015** provides a statutory basis for REAs. An REA is a collective agreement made between a trade union or unions and either an individual employer, a group of employers or an employers' organisation. An REA can set the pay and conditions of employment of the workers specified in the agreement. Either party to the agreement (e.g. employer or trade union) may apply to the Labour Court to have the agreement registered. The REA is binding only on the parties to the agreement. Once registered, the Labour Court will maintain a register of agreements and publish the details of the registration, variation or cancellation of the REA on its website.

The Labour Court will not register an employment agreement unless it is satisfied that:

- There is agreement between all parties that it should be registered,
- It is satisfied that it is desirable or expedient to have a separate agreement for the class, type or group of workers covered by the agreement,
- The trade union(s) of workers is substantially representative of such workers,
- The agreement provides that, if a trade dispute occurs between workers to whom the agreement relates and their employer, industrial action or lockout shall not take place until the dispute has been submitted for settlement by negotiation in the manner specified in the agreement,
- The registration of the agreement is likely to promote harmonious relations between workers and their employer, and the avoidance of industrial unrest,
- The agreement specifies the circumstances in which the agreement may be terminated.

An REA will not prejudice any rights as to rates of remuneration or conditions of employment conferred on any worker by or under this or any other Act.

The Act provides for the variation of REAs where all parties are in agreement. Where agreement cannot be reached following the exhaustion of the dispute resolution procedures contained in the REA, one party may refer the dispute to the WRC for conciliation. If agreement is not reached

following conciliation, it can be referred to the Labour Court for investigation. The Labour Court can either refuse or vary the agreement as it deems appropriate and decide on the interpretation of any provision in the REA. The Act provides that the terms of an REA will form part of an employee's contract of employment.

REAs can be cancelled where all parties agree, where the REA is no longer representative of the workers concerned or where it has expired and an application to renew it has not been made.

3. Sectoral Employment Orders

The **Industrial Relations (Amendment) Act 2015** also provides the legal basis for Sectoral Employment Orders (SEOs). An SEO can set the pay, pension or sick pay scheme for workers in an economic sector.

The Act provides that a trade union or organisation that represents employees or employers which, the Labour Court is satisfied is substantially representative of workers or employers of a particular class, type or group of workers in a particular economic sector, may request the Labour Court to examine the terms and conditions relating to the remuneration, sick pay or pension of workers of that particular sector and request the Labour Court to make a recommendation to the Minister for Enterprise, Trade and Employment.

The Minister has 6 weeks to accept the recommendation and confirm the terms of the recommendation effective from a date specified by the Minister in an SEO. The SEO shall only come into effect when it is passed by both Houses of the Oireachtas.

The Labour Court may not consider a request where the Minister has made an SEO for that sector in the previous 12 months, unless there are exceptional and compelling reasons.

The Labour Court will have to be satisfied that it is normal and desirable practice to have separate rates of remuneration, sick pay and pension provisions in the sector concerned and any recommendation is likely to promote harmonious relations in the sector and preserve high standards of training and qualifications and ensure fair and sustainable rates of remuneration in the sector.

The recommendation by the Labour Court may provide for:

- A minimum hourly rate of pay in excess of the National Minimum Wage,
- Not more than 2 higher hourly rates of basic pay based on length of service in the sector or enterprise concerned, or the attainment of recognised standards or skills in the sector concerned,
- Minimum rates of pay in respect of young workers and apprentices,
- Any pay in excess of basic pay in respect of shift work, piece work, overtime, unsocial hours worked or travelling time, and
- Minimum rates of contributions by employers and workers to a pension scheme.

An SEO shall apply to all workers in the relevant sector, irrespective of whether the worker and his or her employer were party to the request to the Labour Court and the terms of any SEO will form part of a worker's contract of employment. Employees are protected from penalisation where they invoke any entitlements under an SEO. SEOs generally contain a dispute resolution procedure which requires employees to raise individual disputes with their employer at local level first. The employer must respond within 5 working days. If it is not resolved the dispute can be referred to the WRC.

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The Act provides for a mechanism to allow an employer, experiencing financial difficulties, apply to the Labour Court for a temporary exemption from the requirement to pay the remuneration provided for in the SEO. The exemption is subject to a minimum of 3 months and a maximum of 24 months. An exemption can only be availed of once in a 5 year period.

If an SEO has not been amended or revoked within 3 years, the Minister may request the Labour Court to undertake a review of the SEO.

There are currently 2 SEOs in force:

- Construction Sector
- Mechanical Engineering Building Services Contracting Sector

The previous SEO for the Electrical Contracting Sector was set aside in October 2022 following a High Court challenge to the SEO by the National Electric Contractors of Ireland (NECI). Further details on this are detailed below.

4. Contract Cleaning Industry¹

Application

This ERO applies to workers employed by undertakings engaged in whole or in part on the provision of cleaning and janitorial services in, or on the exterior of, establishments including hospitals, offices, shops, stores, factories, apartment buildings, hotels, airports and similar establishments. It does not apply to workers engaged in exterior structural cleaning.

Remuneration

The minimum hourly rate of pay for employees working in the contract cleaning industry is as follows:

	From 1 April 2022	From 1 April 2023	From 1 April 2024
Aged 20 or over	€11.55	€11.90	€12.30
Aged 19 (90%)	€10.40	€10.71	€11.07
Aged 18 (80%)	€9.24	€9.52	€9.84
Under 18 (70%)	€8.09	€8.33	€8.61

Premium Rates

Overtime rates are payable after 46 hours worked Monday to Sunday. Overtime carried out after 40 hours up to 46 hours per week is payable at the basic hourly rate.

Overtime at time and a half applies to the first 4 hours of overtime worked in excess of 46 hours per week and double time thereafter, with Sunday overtime being paid at double time. Overtime is voluntary on the part of the employee in that they can opt to carry out the work or not.

Conditions of Employment

Working Hours

There is no reference to maximum working hours in this ERO. Employers and employees must comply with the rules set down in the **Organisation of Working Time Act 1997**. Rosters setting out the hours of work for a minimum period of 1 week must be made available to employees at least 3 days in advance of that week.

4 weeks' notice must be given to an employee of any change in their working hours, or else they must be paid in lieu of the notice.

Rest Periods

There is no reference to rest breaks in this ERO. Employers and employees must comply with the rules set down in the **Organisation of Working Time Act 1997**.

Holidays

Annual leave and public holiday entitlements are in accordance with the **Organisation of Working Time Act 1997**. However, workers employed before 2nd August 2012 will be paid for Good Friday as if it were a public holiday without the requirement to have worked 40 hours in the previous 5 weeks which applies to part-time employees. For workers employed since 2nd August 2012, Good Friday is treated as a normal working day unless they have a contractual entitlement to payment for Good Friday.

¹ Employment Regulation Order (Contract Cleaning Industry Joint Labour Committee) 2022 - S.I. No. 110 of 2022

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Where an employee normally works on a Sunday, any Sunday premium payment must be included in the calculation of holiday pay based on the average of Sundays worked in the 13 weeks prior to the employee's holidays.

Sick Pay Scheme

A contributory sick pay scheme applies. Employees may opt into the scheme at any stage following commencement of employment. Thereafter, they may opt in or out of the scheme on 1st January each year. Employees are required to contribute 0.5% of their basic rate of pay. A medical certificate is required to be submitted to the 3rd day of sick leave, and on a weekly basis thereafter.

No sick pay will apply for the first 5 days of illness. Thereafter, employees are entitled to sick pay of 20% of their basic weekly rate for up to 6 weeks of certified sick leave in any 1 rolling year, subject to the combined amount of sick pay and Illness Benefit not exceeding the employee's weekly pay.

Miscellaneous

Employees are entitled to receive itemised payslips to include the basic hours and basic rate, Sunday hours and premium rate, public holiday pay, holiday pay and any deductions from pay.

An employee is entitled to request and receive from his employer once per year and on cessation of employment, a certificate of service, showing the period of his employment and the length of service.

Correspondence with employees in relation to rosters, payslips, documents referred to in this ERO and other communications from the Employer will be provided by the employer by email or company portal, where the employee has the facility to access email communication and web. Employees are requested to provide an email address on request from the Employer. Where the employee does not have the facility and/or is not agreeable, alternative communication methods which are suitable to and agreed with the employee, will apply.

After 2 years continuous service in the cleaning industry a Death in Service Benefit of €5,000 will apply for existing employees. Employees will then be added in January of each subsequent year following the completion of the 2 year qualifying period of service. The benefit is payable in the event of the employee's death occurring before State Pension age.

Transfer of Undertakings

In the event of a transfer of undertakings, the outgoing employer must provide each employee:

- With a statement of their terms of employment at least 2 weeks prior to the transfer,
- With a statement of the employee's annual leave balance within 2 weeks of the final payroll (a copy must also be supplied to the incoming employer), and
- With a certificate of service in advance of the transfer occurring (a copy must also be supplied to the incoming employer).

Uniforms

- For new employees (excluding transfer of undertakings), an initial one-off deduction of €15 (which can be spread over 3 pay periods) will be made from the employee in respect of cost of all uniforms supplied by the employer. If the employee resigns in the first 6 months, the employer is permitted to deduct a further €10 from any outstanding wages due to the employee.

5. Security Industry²

Application

This ERO applies to all security operatives (i.e. a person employed by a security firm to provide a security service for contract clients of that firm), and perform one or more of the primary functions as follows:

- The prevention or detection of theft, loss, embezzlement, misappropriation or concealment of merchandise, money, stocks, notes or other valuables,
- The prevention or detection of intrusion, unauthorised entry or activity, vandalism or trespass on private property either by physical, electronic or mechanical means,
- The enforcement of rules, regulations and policies related to crime reduction,
- The protection of individuals from bodily harm.

The ERO does not apply to managers (including trainee and assistant managers) and workers who are subject to a separate ERO or REA.

Remuneration

Minimum Pay

Pay for security workers is set at €11.65 per hour since 1st June 2019 for experienced adult workers (a person aged 18 years or over and not in the first 2 years of employment since turning 18).

There are pro-rata rates workers under 18 and those within the first 2 years of employment, as follows:

- Workers under age 18 are entitled to €8.16 which is 70% of €11.65 per working hour.
- Workers in the first year of employment over the age of 18 are entitled to €9.32 which is 80% of €11.65 per working hour.
- Workers in the second year of employment over the age of 18 are entitled to €10.49 which is 90% of €11.65 per working hour.

The rates for employees aged over 18, involved in structured training during working hours, are as follows:

- 1st one-third period - €8.74 which is 75% of €11.65 per working hour.
- 2nd one-third period - €9.32 which is 80% of €11.65 per working hour.
- 3rd one-third period - €10.49 which is 90% of €11.65 per working hour.

Note: Employees aged 20 years or over are entitled to the National Minimum Wage of €11.30 per hour where this is more favourable than the rates outlined above.

Overtime Rates

All hours worked in excess of an average 48 hours per week in the roster cycle will be paid at a rate of time and a half. A rostered cycle is a predetermined working pattern, which can be up to a maximum of 6 weeks, which has been issued to the employee in writing prior to the commencement of the roster cycle.

² Employment Regulation Order (Security Industry Joint Labour Committee) 2017 - S.I. No. 231 of 2017

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Conditions of Employment

Working Hours

Hours or work for a minimum period of one week must be available to employees in writing except in exceptional circumstances where a minimum of 3 days advance notice must be given. Rosters can be flexible depending on the needs of the business.

Rest Periods and Breaks

Employees can be exempted, by agreement, from the daily and weekly rest breaks provided for in the **Organisation of Working Time Act 1997**, but each employer must ensure that each employee has a rest period and break which can be regarded as equivalent to those provided for in the Act.

Annual Leave

Annual leave and public holiday entitlements are in accordance with the **Organisation of Working Time Act 1997**. Regular rostered overtime, averaged over the previous 13 weeks worked prior to the taking of annual leave, is to be included for the purposes of holiday pay.

Personal Attack Benefit

A non-contributory Personal Attack Benefit applies after 6 months service to employees who suffer an injury due to an attack in the course of duty. The amount of Personal Attack Benefit payable is as follows:

- After 6 months service – 10 weeks' basic pay, less Illness Benefit
- After 18 months service – 15 weeks' basic pay, less Illness Benefit
- After 30 months service – 20 weeks' basic pay, less Illness Benefit
- After 42 months service – 26 weeks' basic pay, less Illness Benefit

Sick Pay Scheme

A non-contributory sick pay scheme applies subject to the following conditions:

- Sick pay is not payable for the first 3 days of any absence
- The employer must be contacted at least 1 hour before the normal commencement time on the first day of absence
- A medical certificate must be submitted on the 4th day and on a weekly basis thereafter
- The sick pay scheme does not apply to absences due to traffic accidents (unless incurred during the course of employment), sports injuries, substance abuse or accidents incurred while working for another employer.

Sick pay payable is as follows:

- After 18 months' service – 3 weeks' sick pay
- After 30 months' service – 4 weeks' sick pay
- After 42 months' service – 5 weeks' sick pay

Sick pay is payable at €120 per rostered week (39 hours), or on a pro-rata basis for part time employees. Employees will retain any payment received from the DSP.

Facilities

The employer or client must provide appropriate facilities and protection to ensure the safety, health and welfare of their employees at their place of employment to include, protective clothing,

shelter, toilet, heat, light and access to canteens or means to heat/cook food, communication equipment and first aid. Adequate monitoring procedures must also be provided by the employer to ensure the safety and security of workers.

Training

Where training is provided to a new employee and the employee leaves within 3 months, the employer can deduct 16 hours' pay for training, and where the employee leaves after 3 months but before 6 months, the employer can deduct 8 hours pay for training.

Uniforms

Subject to normal wear and tear, the employer is responsible for bearing the cost of all uniforms for employees. If the employee leaves within 3 months of being given a uniform, the employer can deduct 100% of the cost of the uniform or 50% where the employee leaves after 3 months but before 6 months, where the uniform is not returned to the employer.

Miscellaneous

An employee is entitled to receive from his employer, a certificate of service, showing the period of his employment and the length of service.

After 6 months service with the company a non-contributory Death in Service Benefit, equal to one year's basis pay will be payable up to State Pension age of the employee, whether the employee was on duty or not at the time of death.

Update to Security Industry ERO

On 3rd August 2022, Damien English TD, Minister of State for Business, Employment and Retail accepted a proposal for an ERO for the Security Industry. The Order was **due to** commence on 29th August 2022 (replacing the existing ERO (**S.I. No. 231 of 2017**)) and would have provided for the following changes:

- Minimum rate of pay would have increased from €11.65 per hour to €12.50 per hour for those aged 20 years and over. This would have increased again to €12.90 per hour from 1st February 2023.
- Sub minima rates of 70%, 80% and 90% would apply to those under the age of 18, those aged 18 and those aged 19 respectively.
- An unsocial hours premium of €8.40 per shift would be payable to workers who work between 9pm and 7am provided they worked at least 3 hours during that period.
- Overtime at time and a half would be payable for hours in excess of an average of 48 hours per week in the roster cycle.
- The roster cycle is a pre-determined working pattern, issued in advance to the employee and can be for a maximum period of 6 weeks.
- Workers over 18 would be paid their normal working hours while they were on authorised study or training either within or outside the workplace.

In addition to the above changes relating to pay, the ERO also provided for some new procedures including:

- Regular rostered overtime should be included when calculating holiday pay.
- Holiday pay should be calculated based on the average hours worked in the 13 weeks prior to taking the leave.

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- Workers covered by the ERO would be exempt from the daily and weekly rest break provisions of the **Organisation of Working Time Act 1997** subject to them receiving equivalent compensatory rest periods.
- Rosters setting the working hours for a minimum of 1 week should be provided to the employee at least 3 days in advance of commencement, other than in exceptional circumstances.

The ERO was challenged by 3 companies who hold the view that the process favoured larger employers and would reduce competition and employment in the industry as it would encourage businesses to look for cheaper technology solutions.

On 24th August 2022, the High Court granted an injunction prohibiting the Minister from commencing the proposed Statutory Instrument giving effect to the new ERO. The increases announced by the Minister will not have statutory effect pending the lifting of the injunction, which has not been lifted at time of going to print.

6. Childcare Sector

The sector comprises any Early Years' Service that provides:

- Any pre-school, play group, day nursery, creche, day-care or other similar service providing service to children who have not attained the age of 6 years and who are not attending a recognised school within the meaning of the **Child Care Act 1991**, and
- Any early years' service, play group, day nursery, crèche, day-care or other similar service which caters for children under the age of 15 years enrolled in a school providing primary or post-primary education and which provides a range of activities that are developmental, educational and recreational in manner outside of school hours and the primary purpose of which is to care for children where their parents are unavailable, and the basis for access to which service is made publicly known to the parents and guardians of the children **but excluding** services solely providing activities relating to the Arts, youth work, competitive or recreational sport, tuition, religious teaching.

The sector does not include the care of one or more children undertaken by a relative of the child or children or the spouse of such a relative; a person taking care of one or more children of the same family and no other such children (other than the person's own children) in that person's home or a person taking care of not more than 6 children, of which not more than 3 are pre-school children, of different families (other than the person's own such children) at the same time in that person's home.

Two EROs apply in the childcare sector, which are summarised below.

6.1 Early Years Educators and School Age Childcare (SAC) Practitioners³

This ERO came into effect on 15th September 2022 and fixes the statutory minimum rates of pay and terms of employment for Early Years Educators and School Age Childcare (SAC) Practitioners.

Early Years Educators and SAC Practitioners are workers who are wholly or mainly in direct contact with children and who are involved in the education and/or care of children.

Minimum Hourly Rate of Pay from 15th September 2022	
Aged 20 or over	€13.00
Aged 19 (90%)	€11.70
Aged 18 (80%)	€10.40
Under 18 (70%)	€9.10

6.2 Childcare Workers – Higher Grades⁴

This ERO also came into effect on 15th September 2022. This ERO fixes the statutory minimum entitlement for the following category of workers:

- Lead Educators (Room Leaders),
- School Age Childcare (SAC) Coordinators (including graduate rate),
- Deputy/Assistant Managers, and
- Centre Manage (including graduate rates).

The following is a summary of the rates of pay for a worker who is aged 20 years or over:

³ Employment Regulation Order (Early Years' Service No.1 Joint Labour Committee) 2022 - S.I. No 457 of 2022

⁴ Employment Regulation Order (Early Years' Service No.2 Joint Labour Committee) 2022 - S.I. No 458 of 2022

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Hourly Rate	Category of Worker
€14.00	A. Lead Educators & SAC Coordinators A Lead Educator (Room Leader) and SAC Coordinator means a worker who is wholly or mainly in direct contact with children and who is involved in the education and/or care of children; and has responsibility for the education and/or care for a group of children, leading the practice with that group of children.
€15.50	B. Graduate Lead Educators (Room Leaders) and Graduate SAC Coordinators A worker as set out in A above who has attained a minimum QQI Level 7 Qualification, or equivalent which is approved by the Department of Children, Equality, Disability, Integration and Youth and who has at least 3 years in total (i.e. full academic years or 9 months of work within each calendar year) of paid experience working full-time or part-time with children in one or more early education and care services or school age childcare services. The 3 years of paid service may be worked before, during, or after the qualification has been awarded.
€15.70	C. Deputy/Assistant Manager A worker who is appointed by their employer to support the manager in the day to day management of the service. They may also work directly with children. They may deputise as the person in charge in the absence of the manager.
€16.50	D. Centre Manager A worker who is the primary designated person in charge of the service who carries out the day to day management duties and responsibilities for the service. The manager may also work directly with children.
€17.25	E. Graduate Centre Manager A worker as set out in D above who has attained a minimum QQI Level 7 qualification or equivalent which is approved by the Department of Children, Equality, Disability, Integration and Youth and who has at least 3 years in total (i.e. full academic years or 9 months of work within each calendar year) of paid experience working full-time or part-time with children in one or more early education and care services or school age childcare services. The 3 years of paid service may be worked before, during, or after the qualification has been awarded.

The rates for workers who are under 20 years of age are set out below:

- Workers under 18 years of age are entitled to 70% of the above hourly rates,
- Workers who are 18 years of age are entitled to 80% of the above hourly rates, and
- Workers who are 19 years of age are entitled to 90% of the above hourly rates.

6.3 Childcare Workers – Terms and Conditions of Employment

Other than the rate of pay, the terms and conditions of employment as laid out in other enactments (e.g. **Organisation of Working Time Act 1997**, **Terms of Employment (Information) Acts 1994 to 2014**, **Payment of Wages Act 1991**, etc.) apply to childcare workers.

Childcare workers are entitled to statutory sick pay for as provided for under the **Sick Leave Act 2022**, since it commenced on 1st January 2023, assuming they have 13 weeks continuous service, and the sick leave is certified by a medical practitioner.

Existing employment contracts remain valid except in circumstances where the remuneration or terms and conditions are below what is set out in this ERO. While the ERO sets down the minimum terms, it is at the discretion of employers and employees to negotiate and enter into contracts providing for terms and conditions which are higher than those set out in this ERO.

7. Construction Industry⁵

Application

This SEO applies to craft workers, general operatives and apprentices employed by Building Firms and Civil Engineering Firms.

Building Firms

Building Firms are defined in the SEO as an undertaking whose principal business is one, or a combination of, any of the following activities:

- (a) The construction, reconstruction, alteration, repair, painting, decoration, fitting of glass in buildings, and the demolition of buildings;
- (b) The installation, alteration, fitting, repair, painting, decoration, maintenance and demolition in any building, or its site, of articles, fittings, pipes, containers, tubes, wires or instruments (including central heating apparatus, machinery and fuel containers connected thereto) for the heating, lighting, power or water supply of such buildings;
- (c)
 - i) The clearing and laying out of sites for buildings.
 - ii) The construction of foundations on such sites.
 - iii) The construction, reconstruction, repair and maintenance within such sites of all sewers, drains and other works for use in connection with sanitation of buildings and the disposal of waste.
 - iv) The construction, reconstruction, repair and maintenance on such sites of boundary walls, railings and fences for the use, protection or ornamentation of buildings.
 - v) The making of roads and paths within the boundaries of such sites.
- (d) The manufacture, alteration, fitting, and repair of articles of worked stone (including rough punched granite and stone), granite, marble, slate and plaster.

Civil Engineering Firms

Civil Engineering Firms are defined in the SEO as an undertaking whose principal business is one, or a combination of, any of the following activities:

- (a) The construction, reconstruction, alteration, repair, painting, decoration and demolition of:
 - Roads, paths, kerbs, bridges, viaducts, aqueducts, harbours, docks, wharves, piers, quays, promenades, landing places, sea defences, airports, canals, waterworks, reservoirs, filter beds, works for the production of gas or electricity, sewerage and all work in connection with building their sites and mains;
 - Rivers works, dams, weirs, embankments, breakwaters, moles, works for the purpose of road drainage or the prevention of coastal erosion;
 - Cattle markets, fair grounds, sports grounds, playgrounds, tennis courts, ball alleys, swimming pools, public baths, bathing places in concrete, stone tarmacadam, asphalt or like material, any boundary walls, railings, fences and shelters erected thereon.

⁵ Sectoral Employment Order (Construction Sector) 2021 - S.I. No 598 of 2021

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Rates of Pay

Minimum hourly rates of pay are as follows:

Category	From 1 st Feb 2022	From 1 st Feb 2023
New Entrant Workers Applies to all new entrants aged 18 or over for the first 2 years working in the sector	€14.93	€15.35
Category B Worker General Operatives with more than 2 years' experience working in the sector	€18.47	€18.99
Category A Worker Scaffolders who hold an advanced scaffolding card and who have four years' experience; banks operatives; steel fixers; crane drivers and heavy machinery operators.	€19.91	€20.47
Craft Worker Bricklayers; stone layers; carpenters and joiners; floor layers; glaziers; painters; plasterers; stone cutters; wood machinists; slaters and tilers.	€20.52	€21.09
Apprentice rates Year 1 – 33.3% of Craft Worker rate Year 2 – 50% of Craft Worker rate Year 3 – 75% of Craft Worker rate Year 4 – 90% of Craft Worker rate		

Normal Working Time

The normal working week shall consist of 39 hours worked between Monday and Friday each week. Normal daily working hours shall consist of 4 days of 8 consecutive hour's work undertaken between 7am (normal starting time) and 5pm (normal finishing time) Monday – Thursday inclusive and one day of 7 consecutive hour's work between the 7am (normal starting time) and 4pm (normal finishing time) on Friday.

Overtime Payments

The SEO provides for unsocial hours premiums as follows:

Day	Time	Rate
Monday to Friday	Normal finishing time to midnight	Time and a half
Monday to Friday	Midnight to normal starting time	Double time
Saturday	First 4 hours from normal starting time	Time and a half
	All subsequent hours until midnight	Double time
Sunday	All hours worked	Double time
Public holiday	All hours worked	Double time plus an additional day of annual leave

Pension Scheme

The SEO provides that every employer to whom the SEO applies shall participate in a pension scheme, with terms no less favourable than those outlined in the Sectoral Employment Order (Construction Sector) 2019⁶ which are summarised as follows:

- The pension scheme should be an Occupational Pension Scheme which is registered with and regulated by the Pensions Authority.
- The pension scheme should be established as a multi-employer scheme open to all employers in the sector.
- Members should be able to have a single individual pension account to enable successive employers to contribute to the member's account.
- Employers and employees are required to contribute to the pension scheme and contributions must be remitted to the scheme by the 21st of the following month.
- The pension scheme must accept members aged 18 or over but not yet attained age 65.
- Employee and Employer contributions will be retained in the account following the cessation of employment and the scheme should not permit the employee to take a refund of their contributions prior to normal retirement age which is set at 65.
- The pension scheme must also provide an additional Death in Service benefit with members covered for this benefit upon joining the scheme with a portion of the contribution being paid by both the employer and member. Where a member dies within 4 weeks of leaving employment without being re-employed in the construction sector, the scheme should provide for a reduced lump death in service benefit in addition to the value of their pension account. Death in service benefit is payable regardless of the cause or timing of death.

Sick Pay

The SEO provides for a contributory sick pay scheme with contributions and benefits with terms no less favourable than those outlined in the Sectoral Employment Order (Construction Sector) 2019⁷ which are summarised as follows:

- The sick pay scheme should be funded by contributions held in trust and independently managed.
- The sick pay scheme should be established as a multi-employer scheme open to all employers in the sector.
- Sick pay benefit should be paid without reference to any previous medical condition and should be unaffected where an employee transfers from one employer to another within the sector and is in addition to Illness Benefit provided by the Department of Social Protection.
- Employers and employees are required to contribute to the sick pay scheme.
- Entitlement to sick pay benefits will not be lost where an employee transfers between employers in the construction sector.
- The scheme must provide for a standard sick pay benefit for a specified duration.
- The scheme is permitted to apply a waiting period of up to 5 days in respect of which the employee would not receive any benefit. No waiting days are permitted on a subsequent claim where an employee returns to work for a period of 2 days or less, assuming the employee has not exhausted his entitlement under the scheme.
- The scheme should provide for a supplementary benefit where the employee does not meet the qualifying PRSI contribution conditions for Illness Benefit.
- The scheme may limit the maximum duration to a minimum of 10 weeks for which a sick benefit will be payable.

⁶ S.I. No. 234 of 2019

⁷ S.I. No. 234 of 2019

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The sick pay scheme operated by the Construction Workers Pension Scheme (CWPS) satisfies these criteria. To qualify for sick pay under the CWPS sick pay scheme, the individual must have paid at least 13 contributions into the scheme in the 6 months immediately prior to the first day of the illness. The CWPS scheme provides for a sick pay benefit of €44 per day from the 4th day of illness for 5 days each week up to a maximum benefit of 50 working days in a calendar year. It is not payable for Saturdays, Sundays or public holidays. This sick pay is paid directly by the CWPS to the individual and is in addition to any Illness or Occupational Injury Benefit the individual is entitled to claim from the DSP.

Pension and Sick Pay Contributions

Pension Contributions	From 1 st February 2022		From 1 st February 2023	
	Daily Rate	Weekly Rate	Daily Rate	Weekly Rate
Employer	€5.73	€28.65	€5.84	€29.20
Employee	€3.82*	€19.10*	€3.90*	€19.50*
Total	€9.55	€47.75	€9.74	€48.70
Death in Service Contributions				
Employer		€1.17		€1.17
Employee		€1.17*		€1.17*
Total		€2.34		€2.34
Sick Pay Scheme Contributions				
Employer		€1.27		€1.27
Employee		€0.63		€0.63
Total		€1.90		€1.90

*These contributions qualify for tax relief at the employee's marginal rate of tax (20% or 40% as appropriate).

Dispute Resolution Procedure

The dispute (individual or collective) should be first raised with the employer locally. The employer has 5 days to respond. Notice of the dispute in writing should be given by the employee or his trade union to the employer or to the organisation representing the employer.

If an individual dispute is not resolved it should be referred to the WRC for adjudication as normal. Either party can appeal the decision of the WRC to the Labour Court.

If a collective dispute is not resolved it should be referred to the Conciliation Service of the WRC. If the dispute is not resolved at this time it will be referred to the Labour Court for investigation and a recommendation.

8. Mechanical Engineering Building Services Contracting Sector⁸

Application

This SEO applies employees aged 15 years or over employed in the sector as:

- Qualified plumbers and registered apprentice plumbers (craftsperson), and
- Qualified pipefitters and registered apprentice pipefitters (craftsperson).

Qualified plumbers and pipefitters who have acquired additional or advanced welding qualifications and who are required to function as welders on a day to day basis within the sector come within the scope of this SEO.

Rates of Pay

The current minimum rate of pay for this sector as are set as follows:

Category 1 €22.73 per hour	Newly qualified plumbers and pipefitters for the first 3 years following qualification.
Category 2 €23.33 per hour	Qualified plumbers and pipefitters from the commencement of their 3 rd year of employment after qualification
Category 3 €23.60 per hour	Qualified plumbers and pipefitters from the commencement of their 6 th year of employment after qualification
Apprentice rates	Year 1 – 33.3% of Category 1 rate Year 2 – 50% of Category 1 rate Year 3 – 75% of Category 1 rate Year 4 – 90% of Category 1 rate

The above rates have been in place since 2018. A request was made to the Labour Court to examine the terms and conditions relating to remuneration, and any sick pay or pension scheme of workers in the Mechanical Engineering and Building Services Contracting Sector, however a new SEO was not published at the time of going to print.

Normal Working Time and Unsocial Hours Payments

The normal working week shall consist of 39 hours between Monday and Friday. The normal daily working hours shall consist of 8 hours between 7am (normal weekday starting time) and 5 pm (normal weekday finishing time) Monday to Thursday, and 7 hours between 7am (normal Friday starting time) and 4pm (normal Friday finishing time) on Friday.

The SEO provides for unsocial hours premiums as follows:

Day	Time	Rate
Monday to Friday	Normal finishing time to midnight	Time and a half
Monday to Friday	Midnight to normal starting time	Double time
Saturday	First 4 hours after normal starting time	Time and a half
	All other hours worked on a Saturday	Double time
Sunday	All hours worked	Double time
Public Holiday	All hours worked	Double time plus an additional day's paid leave

⁸ Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018 - SI No 59 of 2018

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Pension Scheme

The SEO provides that every employer to whom the SEO applies shall participate in a pension scheme, with terms no less favourable than the Construction Workers Pension Scheme (CWPS), that meets the following requirements:

- The pension scheme should be an Occupational Pension Scheme which is registered with and regulated by the Pensions Authority.
- The pension scheme should be established as a multi-employer scheme open to all employers in the sector.
- Members should be able to have a single individual pension account to enable successive employers to contribute to the member's account.
- Employers and employees are required to contribute to the pension scheme and contributions must be remitted to the scheme by the 21st of the following month.
- The pension scheme must accept members aged 18 or over but not yet attained age 65.
- Employee and Employer contributions will be retained in the account following the cessation of employment and the scheme should not permit the employee to take a refund of their contributions prior to normal retirement age which is set at 65.
- The pension scheme must also provide an additional Death in Service benefit with members covered for this benefit upon joining the scheme with a portion of the contribution being paid by both the employer and member. Where a member dies within 4 weeks of leaving employment without being re-employed in the construction sector, the scheme should provide for a reduced lump death in service benefit in addition to the value of their pension account. Death in service benefit is payable regardless of the cause or timing of death.

Sick Pay

The SEO provides for a contributory sick pay scheme with contributions and benefits which must be no less favourable than the sick pay scheme operated by the Construction Workers Pension Scheme (CWPS).

To qualify for sick pay under the CWPS sick pay scheme, the individual must have paid at least 13 contributions into the scheme in the 6 months immediately prior to the first day of the illness. The CWPS scheme provides for a sick pay benefit of €44 per day from the 4th day of illness for 5 days each week up to a maximum benefit of 50 working days in a calendar year. It is not payable for Saturdays, Sundays or public holidays. This sick pay is paid directly by the CWPS to the individual and is in addition to any Illness or Occupational Injury Benefit the individual is entitled to claim from the DSP.

Pension and Sick Pay Contributions

Pension Contributions	From 1 st February 2022		From 1 st February 2023	
	Daily Rate	Weekly Rate	Daily Rate	Weekly Rate
Employer	€5.73	€28.65	€5.84	€29.20
Employee	€3.82*	€19.10*	€3.90*	€19.50*
Total	€9.55	€47.75	€9.74	€48.70
Death in Service Contributions				
Employer		€1.17		€1.17
Employee		€1.17*		€1.17*
Total		€2.34		€2.34

Sick Pay Scheme Contributions				
Employer		€1.27		€1.27
Employee		€0.63		€0.63
Total		€1.90		€1.90

*These contributions qualify for tax relief at the employee's marginal rate of tax (20% or 40% as appropriate).

Dispute Resolution Procedure

The dispute (individual or collective) should be first raised with the employer locally. The employer has 5 days to respond. Notice of the dispute in writing should be given by the employee or his trade union to the employer or to the organisation representing the employer.

If an individual dispute is not resolved it should be referred to the WRC for adjudication as normal. Either party can appeal the decision of the WRC to the Labour Court.

If a collective dispute is not resolved it should be referred to the Conciliation Service of the WRC. If the dispute is not resolved at this time it will be referred to the Labour Court for investigation and a recommendation.

Miscellaneous

A public hearing was scheduled for 14th November 2022 following a request from 2 trade unions to the Labour Court to examine the terms and conditions relating to pay, pension and sick pay applying to workers in the Mechanical Engineering Building Services Contracting Sector.

This may result in a recommendation from the Court for the making of a SEO which could provide for an increase in the minimum pay and pension contribution rates in the sector. No such SEO was made at the time of going to print.

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9. Electrical Contracting Sector⁹

Introduction

This SEO came into effect in February 2022. It was subsequently challenged through the courts by the National Electrical Contractors Ireland (NECI). NECI argued that the SEO was flawed on several grounds including:

- Submission made by NECI to the Labour Court were not correctly dealt with, and
- The SEO imposed terms and conditions that could not be complied with. The NECI alleged that there were no pension schemes, sick pay schemes or death in service schemes in Ireland that could comply with the requirements prescribed in the SEO.

The Government conceded that NECI were correct on at least one of their arguments and they subsequently withdrew their objection to the request by NECI to quash the SEO. The SEO was therefore quashed by the High Court in October 2022.

The pay rates that came into effect on 1st February 2022 remain in place as an existing contractual entitlement for existing employees, however the pay increase, which was due to come into effect on 1st February 2023, is not legally binding on employers in the electrical contracting sector. The existing pay rates outlined in the SEO are not legally binding on new employees recruited into the sector.

For completeness, the main provisions of the SEO are outlined as follows.

Application

This SEO applies to workers employed as qualified electricians and registered apprentice electricians working in the electrical contracting sector. Qualified electricians who are employed as chargehands and foremen also come within the scope of the order. A chargehand is an electrician who is in charge of two but not more than six electricians and a foreman is an electrician on site who is in charge of more than six electricians.

A worker means any person aged 15 years or over employed under a contract of employment or of apprenticeship.

Definition

For the purpose of this SEO, the Electrical Contracting Sector means the sector of the economy comprising the following economic activity:

The installation, alteration, repair, demolition(de-install), Fabrication, & Prefabrication, commissioning or maintenance of electrical and electronic equipment including the marking off and preparing for the wiring (whether temporary or permanent) of all electrical and/or electronic appliances and apparatus, fitting and erecting all controllers, switches, junction section distribution and other fuse boards and all electrical communications, bells, telephone, radio, telegraph, x-ray, computer and data cabling, instrumentation, fibre optics and kindred installations; fitting and fixing of metallic and other conduits, perforated cable tray and casing for protection of cables, cutting away of walls, floors and ceilings etc., for same; erection care and maintenance of all electrical plant, including generators, motors, oil burners, cranes, lifts, fans, refrigerators and hoists; adjustments to all control, rheostats, coils and all electrical contracts and

⁹ Sectoral Employment Order (Electrical Contracting Sector) 2021 - S.I. No. 703 of 2021

connections; wiring of chassis for all vehicles; erection of batteries and switchboards; erection of crossarms, insulators overhead cables (LT and HT); fitting of stay-wires, brackets, lightning arrestors, etc. and underground mains having regard to any advances in technology and equipment used within the industry.

The SEO does not apply to:

- Employees in state and semi-state companies who are engaged in similar activities and are covered by other agreements, and
- Electricians, and apprentices employed directly by manufacturing companies for the maintenance of those companies' plant.

Rates of Pay

Minimum hourly rates of pay are as follows:

Category	From 1 Feb 2022	From 1 Feb 2023*
Category 1 Worker – Newly qualified electricians for the first 2 years following qualification	€24.14	€24.81
Category 2 Worker – Qualified electricians on commencement of the 3 rd year following qualification	€24.63	€25.31
Category 3 Worker – Qualified electricians on commencement of the 6 th year following qualification	€25.02	€25.72
Apprentice rates		
Year 1 – 35% of Category 1 Rate	Year 2 – 45% of Category 1 Rate	
Year 3 – 65% of Category 1 Rate	Year 4 – 80% of Category 1 Rate	

**As a result of the SEO being quashed in October 2022, the pay increase due on 1st February 2023 is not legally binding on employers.*

Normal Working Hours

The normal working week consists of 39 hours worked between Monday and Friday each week.

Normal daily working hours consists of 8 hours between 7am (normal weekday starting time) and 5pm (normal weekday finishing time) Monday to Thursday inclusive and between 7am (normal Friday starting time) and 4pm (normal Friday finishing time) on Friday.

Overtime Payments

The SEO provides for overtime payments as follows:

Day	Time	Rate
Monday to Friday	Normal finishing time to midnight	Time and a half
Monday to Friday	Midnight to normal starting time	Double time
Saturday	First 4 hours worked after 7am	Time and a half
	All subsequent hours until midnight	Double time
Sunday	All hours worked	Double time
Public Holiday	All hours worked	Double time plus an additional day of annual leave

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Pension Scheme

The SEO provides that every employer to whom the SEO applies shall participate in a pension scheme, with terms no less favourable than those outlined in the SEO which are summarised as follows:

- The pension scheme should be an Occupational Pension Scheme which is registered with and regulated by the Pensions Authority.
- Members should be able to have a single individual pension account to enable successive employers to contribute to the member's account.
- Employees are required to contribute to the pension scheme and contributions must be remitted to the scheme by the 21st of the following month.
- Employee and employer contributions will be retained in the account following the cessation of employment to provide for pension benefits. The scheme should not permit the employee to take a refund of their contributions on cessation of employment.
- The pension scheme must also provide an additional Death in Service benefit with members covered for this benefit upon joining the scheme.

Sick Pay

The SEO provides for a contributory sick pay scheme with contributions and benefits with terms no less favourable than those outlined in the SEO which are summarised as follows:

- The sick pay scheme should be funded by contributions held in trust and independently managed.
- The sick pay scheme should be established as a multi-employer scheme open to all employers in the sector.
- Sick pay benefit should be paid without reference to any previous medical condition and should be unaffected where an employee transfers from one employer to another within the sector and is in addition to Illness Benefit provided by the Department of Social Protection.
- Employers and employees are required to contribute to the sick pay scheme.
- Entitlement to sick pay benefits will not be lost where an employee transfers between employers in the electrical contracting sector.
- The scheme must provide for a standard sick pay benefit for a specified duration.

The sick pay scheme operated by the Construction Workers Pension Scheme (CWPS) satisfies these criteria. To qualify for sick pay under the CWPS sick pay scheme, the individual must have paid at least 13 contributions into the scheme in the 6 months immediately prior to the first day of the illness. The CWPS scheme provides for a sick pay benefit of €44 per day from the 4th day of illness for 5 days each week up to a maximum benefit of 50 working days in a calendar year. It is not payable for Saturdays, Sundays or public holidays. This sick pay is paid directly by the CWPS to the individual and is in addition to any Illness or Occupational Injury Benefit the individual is entitled to claim from the DSP.

Pension and Sick Pay Contributions

Pension Contributions	From 1 February 2022		From 1 February 2023**	
	Daily Rate	Weekly Rate	Daily Rate	Weekly Rate
Employer	€5.73	€28.65	€5.84	€29.20
Employee	€3.82*	€19.10*	€3.90*	€19.50*
Total	€9.55	€47.75	€9.74	€48.70

Death in Service Contributions				
Employer		€1.17		€1.17
Employee		€1.17*		€1.17*
Total		€2.34		€2.34
Sick Pay Scheme Contributions				
Employer		€1.27		€1.27
Employee		€0.63		€0.63
Total		€1.90		€1.90

*These contributions qualify for tax relief at the employee's marginal rate of tax (20% or 40% as appropriate).

**As a result of the SEO being quashed in October 2022, the increased pension contribution rates applicable from 1st February 2023 are not legally binding on employers.

Dispute Resolution Procedure

The dispute (individual or collective) should be first raised with the employer locally. The employer has 5 days to respond. Notice of the dispute in writing should be given by the employee or his trade union to the employer or to the organisation representing the employer.

If an individual dispute is not resolved it should be referred to the WRC for adjudication as normal. Either party can appeal the decision of the WRC to the Labour Court.

If a collective dispute is not resolved it should be referred to the Conciliation Service of the WRC. If the dispute is not resolved at this time it will be referred to the Labour Court for investigation and a recommendation.

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CSO Surveys

- 1. Introduction**
 - 2. Earnings, Hours & Employment Costs Survey (EHECS)**
-

1. Introduction

The Central Statistics Office (CSO) collates data from various sources and produces their findings in the form of a report. The CSO collects data from employers by means of the Earnings, Hours and Employment Costs Survey (EHECS).

2. Earnings, Hours and Employment Costs Survey (EHECS)

The EHECS is a compulsory quarterly earnings survey and was originally introduced in 2008.¹ The Statutory Instruments governing the survey cover a 5-year period. The latest Statutory Instrument² extended the duration for another 5 years up to March 2028. extend this reporting obligation for another 5 years. The survey includes all enterprises with 50 or more employees and a sample of enterprises with between 2 and 49 employees are also surveyed.

The survey produces an index of labour costs per hour worked. To achieve this, the CSO requires information on wages and salaries, employer's PRSI contributions, employer pension contributions and other non-wage costs and hours worked. All EU member states are obliged to compile Labour Cost indices as they provide vital information for future social and economic planning, such as wage agreements, etc.

The EHECS uses standardised forms for all business sectors with a standard occupational classification for all enterprises. Form A is issued to all employers with more than 100 employees and to smaller enterprises using CSO compatible payroll software packages. The completion of the EHECS generally falls within the remit of the payroll department as the payroll software contains the information for completing the survey. When setting up employees on the payroll, it is important to ensure that they are recorded correctly, (e.g. full-time or part-time, manager or clerical, etc.) It is important to ensure that pay codes are mapped correctly on the software to ensure they are reported correctly in the EHECS. The majority of payroll software products generate the EHECS report which can be submitted to the CSO in a CSV file. Employers are required to submit the files via the CSO's Secure Deposit Box. The Secure Deposit Box is a private secure link available on the CSO website for transferring the data electronically. *A copy of Form A is included at the end of the chapter.*

Form B is a less detailed form and is issued to smaller enterprises. Form B must be completed manually and will be scanned when received by the CSO. Therefore, employers should complete Form B in black or blue ink and enter one number in each box. If nothing is to be entered in a

¹ Statistics (Labour Costs Surveys) Order 2008, S.I. No. 314 of 2008

² Statistics (Labour Costs Surveys) Order 2018, S.I. No. 115 of 2018

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box it should be left blank and not be completed with zeros or dashes. Boxes should not contain commas, decimal points or text, i.e. only whole numbers should be inserted.

2.1 Completing the EHECS Form

The employer will receive a questionnaire on a quarterly basis relating to the number of employees employed in his business during that quarter. Employers are obliged to provide the total wages paid, total hours paid (hours worked and hours not worked e.g. annual leave or sick leave), for each category of employee. Any information provided by employers is confidential as it is provided for aggregate statistical purposes only.

When completing Form A, each employee must be categorised into one of the following three occupational groups (this categorisation is not required in Form B):

- Managers, Administrators, Professionals & Associate Professionals (legislators and senior officials, corporate managers, managers of small enterprises, professionals and associate professionals)
- Clerical, Sales & Service Workers (customer services and office clerks, personal services and sales workers, personal care and protective service workers)
- Production, Plant and Transport Workers, Craft & Tradespersons & other Manual Workers (production workers, plant & machine operators & assemblers, skilled craft & trade workers, labourers in mining construction, manufacturing and transport, cleaners and food preparation assistants, and other manual workers)

Definitions

The form includes a number of definitions that employers must be aware of to ensure the capture of accurate data by the CSO. These include:

Part 1 – Number of Persons Employed

Full-time employees

All persons (excluding apprentices and trainees) who have a direct employment contract with the enterprise, regardless of whether the contract is formal or informal, who receive a wage or salary and whose regular working hours are the same as the collectively agreed or customary hours worked in the enterprise, irrespective of the duration of the employment contract.

Part-time employees

All persons (excluding apprentices/trainees) who have a direct employment contract with the enterprise, regardless of whether the contract is formal or informal, who receive a wage or salary and whose regular working hours are less than the collectively agreed or customary hours worked in the enterprise, whether daily, weekly or monthly and irrespective of the duration of the contract. The definition of part-time working may vary from enterprise to enterprise but as a general guideline, if an employee works 80% or less of the regular or normal hours worked in an enterprise or industry, then these employees should be categorised as part-time employees.

Apprentices/Trainees

All persons employed, both full-time or part-time, whose wages/salaries are governed by the fact that they work either under an apprenticeship contract or as part of a training programme.

Other Persons Engaged

This section includes those who are not paid a definite wage or salary (e.g. proprietors, unpaid family members, unpaid voluntary workers, etc.).

Job Vacancies

Employers are asked to indicate the number of job vacancies in their organisation at the end of the quarter. A job vacancy is defined as a post (newly created, unoccupied or about to become vacant) which the employer intends to fill either immediately or in the near future. For the purpose of this survey, job vacancies that are only open to candidates from within the enterprise should be excluded.

National Minimum Wage

Employers are asked to indicate the number of employees in receipt of the National Minimum Wage or less at the end of the quarter. The National Minimum Wage Rate does not apply to:

- Close relatives of the employer, such as a spouse, civil partner, parent, grandparent, step-parent, child, grandchild, step-child, sibling, half-brother or half-sister;
- Those under 20 years of age.

Exclude Pensioners

If the enterprise makes pension payments to its former employees through payroll, then these pensioners should be excluded from all parts of the EHECS return.

Part 2 – Total Wages & Salaries

Include: The gross amount of all wages, salaries, allowances, commissions, bonuses, holiday pay, etc. paid by the enterprise to all of its employees (i.e. before deduction of income tax, employee PRSI, USC, Additional Superannuation Contribution (ASC), employee contributions to pension schemes, etc.).

Exclude: Non-wage payments such as non-taxable travelling and subsistence payments and any payments made to persons not on the payroll (e.g. proprietors and agency workers).

Regular wages and salaries (including sick pay and maternity pay)

Payments made regularly at each pay period during the year. They consist of:

- Basic wages and salaries - including holiday pay, sick pay and maternity pay,
- Wages calculated on the basis of time worked, output or piecework,
- Payments for shift work, Sunday or public holiday work, etc.,
- Bonuses and allowances paid at each pay period, such as those for extra responsibilities, qualifications, length of service, etc.,
- Exclude any pay in advance or arrears.

In relation to sick pay and maternity pay, particular care must be taken if the employer recovers Illness Benefit or Maternity Benefit from the Department of Social Protection (DSP). If the amount entered under regular wages and salaries includes sums which are subsequently refunded by the DSP, then these refunds must be included in Part 7, under Refunds from DSP.

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Overtime

Payment for hours worked in excess of normal hours. The amount entered should relate to the overtime hours entered in Part 3 (i.e. it is the full amount paid for working overtime and not just the overtime premium).

Irregular bonuses and allowances

Bonuses which are not paid regularly at each pay period e.g.

- End of quarter productivity bonuses,
- Golden handshake i.e. exceptional payments to employees leaving the enterprise,
- Backdated pay awards i.e. payments which represent increases in wages and salaries that are applied retrospectively.

Apprentices/Trainees Wages & Salaries

A combined total of regular wages & salaries, overtime and irregular bonuses and allowances should be entered for apprentices and trainees.

Part 3 – Total Hours Paid (both worked and unworked paid hours)

Regular Paid Hours

These are the normal working hours of the employees, usually specified in the contract of employment, and should include paid leave (e.g. paid sick leave, annual leave, maternity leave, etc.). Meal breaks and any unpaid absences such as unpaid sick leave, parental leave, carer's leave, etc. should be excluded.

To ensure consistency between total wages and salaries and total hours paid, particular care should be taken in converting weekly contracted hours into quarterly contracted hours for the following employees:

- Monthly Paid Employees: To convert weekly contracted hours to quarterly contracted hours for employees paid once each calendar month, weekly contracted hours must be multiplied by 13.
- Fortnightly Paid Employees: The number of payments made to fortnightly paid employees will vary between 6 and 7 depending on the quarter. If there are 6 payments made to these employees, the weekly contracted hours should be multiplied by 12 to convert their weekly contracted hours to quarterly contracted hours. If 7 payments are made during the quarter, then the weekly contracted hours should be multiplied by 14.
- Weekly Paid Employees: The weekly contracted hours should be multiplied by the number of payments made during the quarter. This is normally 13.

Paid Overtime Hours

Overtime hours consist of hours worked in excess of contracted hours. These hours, irrespective of the hourly pay rate applied, should be entered as hours. For example, if 2 hours are worked at double time, this should still be regarded as 2 hours worked. Overtime hours should be excluded where leave in lieu is taken instead of payment.

Part 4 – Employers Pension Contributions (cost to Employer only and not included in Part 2)

This refers to the employer's contribution only for all employees, including apprentices/trainees to pension funds. This does not include the employee contribution.

Part 5 – Total Other Employer’s Contributions (cost to Employer only and not included in Part 2)

The total cost of statutory and non-statutory employer contributions should be recorded in this Part. The total cost of employer PRSI should be included for all full time and part time employees, with a separate entry for apprentices. If the employer contributes to a Permanent Health Insurance scheme, life assurance scheme, etc. on behalf of employees, then these costs should be included in this part. The cost of Redundancy payments should also be included.

Part 6 – Total Cost to the Employer of Benefits provided to Employees (excluding apprentices/trainees)

This refers to the total net cost of all goods and services made available to employees (excluding apprentices/trainees) by the employer.

As a general rule - the amount to be entered is the cost to the employer of providing the benefit, less any amount contributed by the employee. If the benefit is taxable, then the **amount of notional pay** calculated for the purpose of making returns to Revenue may be entered as the cost to the employer. These costs mainly consist of:

- Private use of company cars (not the value or cost of the car),
- Stock options and Share purchase schemes: The cost of stock options should be calculated as the difference between the market price of the shares on the vesting date and the price charged to employees,
- Medical insurance (VHI, Laya Healthcare, Irish Life Health, etc.),
- Staff housing,
- Other free or subsidised benefits (e.g. parking, meals, mobile phone, canteen, crèche, free or discounted company products, preferential loans, sports & recreational facilities, professional subscriptions, etc.).

Part 7 - Total Subsidies and Refunds Received

This section should include all subsidies received and all amounts received intended to refund part or all of the cost of wages and salaries and training costs. These refunds may consist of:

Training Subsidies

For example, SOLAS grants, Payments received under the JobsPlus scheme, IDA employment grants, etc.

Refunds from Department of Social Protection

This is the amount received/receivable by the employer from the DSP to refund part or all of the cost of the wages and salaries of employees on paid sick leave or maternity leave, etc. These refunds should only be entered in Part 7 if the amount received/receivable from the DSP is included under Regular Wages & Salaries in Part 2.

2.2 Additional Information

Movement of employees

Where an employee moves from one employment category to another during the quarter i.e. is promoted from a clerical to a managerial position, the person should be coded with the most common employment category during the reference period, e.g. if the person was only promoted at the end of the reference period then it would be the employment category at the beginning of

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the period that should be included. However, in the absence of this possibility, the employment category at the beginning or end of the quarter may be used.

Public Holidays

Where an employee does not work but is paid for a public holiday (the normal arrangement), the amount of pay and the corresponding hours should be entered as if they were worked. The treatment of employees entitled to take leave on a public holiday, but who actually work on the public holiday, depends on how the extra payment for working the holiday is dealt with. If it is treated as a shift payment, then the payment should be included in 'Irregular Bonuses and allowances' (note: only include in 'Irregular Bonuses' if a shift allowance is not paid at each pay period).

However, if the extra time worked is being treated as overtime, then the relevant hours and earnings should be entered as overtime earnings and overtime hours.

Flexi-Time Working Arrangements

Any variation in actual hours worked because of a flexible working arrangement should be ignored. Thus, no adjustment should be made to regular wages and salaries for flexi-time.

On-Call / Shift Allowances

Some employees are paid a regular allowance for being available for work outside of regular hours or for working shifts. Where this on-call or shift allowance is a regular payment, it should be included as part of regular wages.

If the employee is actually called into work during an on-call period, then the extra pay for this is treated as overtime and the hours they work as overtime hours.

Joiners and Leavers

These people meet the criteria for employees and should be included in the EHECS survey.

Employees with no PPS Numbers

There are some cases where a person may not yet have a PPS number. The employer should use the ID Reference variable to give this person a unique ID number or identifier.

Employees on Strike

If employees continue to receive payments from their employer as normal then they should be treated as if they were at work, i.e. their regular salary and paid hours are not affected. If the employees were not paid for the strike hours then their paid hours should be reduced to bring them into line with their reduced salary. The key principle is that the reduced quarterly earnings should be consistent with paid hours.

Arrears of Pay and Pay Advances

All pay arrears for periods before the reference period and/or pay advances for future pay periods after the reference period are to be excluded from all figures included in the survey.

Employees on Paid Leave or Unpaid Leave

The treatment of employees on leave depends on their pay arrangements when absent. If the employee is paid at their normal rate of pay for any part of the leave (e.g. paid sick leave or maternity leave), then the appropriate hours and earnings are included as parts of regular earnings

and paid hours. Where any part of the leave is unpaid by the employer, the employee's hours should be reduced in accordance with the period for which no payment was made.

Employees who take Leave-in-Lieu

For the purpose of this survey, all leave in lieu should be ignored. If an employee works additional hours and takes time off at a later stage rather than getting paid for them, no adjustment should be made to 'Overtime Hours'.

Further information on the EHECS is available from the CSO at:

<https://www.cso.ie/en/methods/earnings/earningshoursandemploymentcostssurvey/>

Tel: 021 453 5000

Email: ehecs@cso.ie or earnings@cso.ie

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EHECS - Form A

CONFIDENTIAL

Form A



Phone enquiries to:
LoCall: 1890 313 414 (ROI)
0870 876 0256 (UK/NI)
Cork (021)
E-mail: ehecs@cso.ie
www.cso.ie

If above details are incorrect,
please amend and tick this box

Enterprise No / CBR :

Earnings, Hours &
Employment Costs
Section
Central Statistics Office
Skehard Road
Cork
T12 X00E

Reply to:
THE DIRECTOR GENERAL
in the free-post envelope
enclosed or electronically
via our Secure Deposit
Box

Earnings, Hours & Employment Costs Survey

Notice is served under Section 26 of the Statistics Act, 1993
You are obliged by law to fully complete and return this form to the Central Statistics Office

Explanatory Notes: Please read the instructions carefully before completing this form. If you require any assistance, please see contact details above.

Purpose of Survey: The Earnings, Hours & Employment Costs Survey enables the Central Statistics Office to compile regular and timely labour cost indices for the purpose of monitoring change in labour costs in Ireland and across the European Union.

Statutory Basis: The data sought by the Central Statistics Office in this questionnaire is compulsory under the Statistics (Labour Costs Surveys) Order, 2018, (S.I. No 115 of 2018), Council Regulation (EC) No. 450/2003 and Council Regulation (EC) No. 530/1999.

Confidentiality: The information you supply will be treated as **strictly confidential** under the provisions of the Statistics Act, 1993.

Thank you in advance for your participation in this survey. The latest results from the survey are available on the CSO website at the address www.cso.ie/en/statistics/earningsandlabourcosts

Tá leagan Gaeilge den fhoirm seo ar fáil.

Pádraig Dalton
Director General

Declaration (To be completed in all cases)

I hereby declare that the information provided in this return is complete and correct to the best of my knowledge and belief.

Name:

Position: Phone:

Payroll Software: Vat no:

Type of return (Enter O for original return or A for amended return) Date: / /

Signature: _____ E-Mail: _____

NACE



Official Use	Relevant Code
<input type="checkbox"/>	<input type="checkbox"/>

P.T.O. →

THANK YOU FOR YOUR CO-OPERATION IN COMPLETING THIS FORM

Part 1 - Number of Persons Employed.

Please complete the following tables with respect to Employees, Apprentices/Trainees and Other Persons Engaged in the business during the quarter. You are also asked to indicate the number of job vacancies and the number of employees in receipt of the National Minimum Wage or allowed sub-minimum rates at the end of the quarter.

Persons Employed	Managers, Professionals & Associate Professionals	Clerical, Sales & Service Workers	Production, Transport Workers, Craft & Tradespersons, Other Manual Workers
Full-Time Employees - as at first day of quarter	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
Part-Time Employees - as at first day of quarter	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
Average number of Apprentices/Trainees engaged in the business during the quarter	<input type="text"/>	<input type="text"/>	<input type="text"/>
Average Number of Other Persons Engaged who are not paid a regular wage/salary during the quarter	<input type="text"/>	<input type="text"/>	<input type="text"/>
Job Vacancies Number of job vacancies as at last working day of quarter (Please see instructions for further details on job vacancies)	<input type="text"/>	<input type="text"/>	<input type="text"/>
National Minimum Wage Number of full-time and part-time employees (i.e. exclude apprentices/trainees) in receipt of €10.20 per hour or less at end of quarter.	<input type="text"/>	<input type="text"/>	<input type="text"/>

Part 2 - Total Wages & Salaries, rounded to nearest Euro.

Please enter a breakdown of total wages and salaries for the quarter in the following table for ALL EMPLOYEES. Figures are sought separately for full-time and part-time Employees and a combined figure is sought for Apprentices/Trainees. Give gross figures before any deductions. Monies paid in relation to the Employment Wage Subsidy Scheme should be included in regular pay.

Wages and Salaries	Managers, Professionals & Associate Professionals €	Clerical, Sales & Service Workers €	Production, Transport Workers, Craft & Tradespersons, Other Manual Workers €
Full-Time Employees Regular wages & salaries (incl. sick and maternity pay)	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
Part-Time Employees Regular wages & salaries (incl. sick and maternity pay)	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
Apprentices/ Trainees Wages and salaries	<input type="text"/>	<input type="text"/>	<input type="text"/>

*Please see instructions for further details on irregular bonuses and allowances

PLEASE REFER TO INSTRUCTIONS FOR ASSISTANCE IN COMPLETING THIS FORM



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Part 3 - Total Hours Paid (both worked and unworked paid hours).

Please indicate the total number of hours paid in the quarter for ALL EMPLOYEES. Figures are required separately for CONTRACTED HOURS and OVERTIME HOURS and should be entered in the following table.

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Hours Paid in the Quarter		Managers, Professionals & Associate Professionals	Clerical, Sales & Service Workers	Production, Transport Workers, Craft & Tradespersons, Other Manual Workers
Full-Time Employees	- Paid Contracted Hours	[] [] [] [] []	[] [] [] [] []	[] [] [] [] []
	- Paid Overtime Hours	[] [] [] [] []	[] [] [] [] []	[] [] [] [] []
Part-Time Employees	- Paid Contracted Hours	[] [] [] [] []	[] [] [] [] []	[] [] [] [] []
	- Paid Overtime Hours	[] [] [] [] []	[] [] [] [] []	[] [] [] [] []
Apprentices/ Trainees	- Paid Contracted Hours	[] [] [] [] []	[] [] [] [] []	[] [] [] [] []
	- Paid Overtime Hours	[] [] [] [] []	[] [] [] [] []	[] [] [] [] []

Part 4 - Employer's Pension Contributions, rounded to nearest Euro (cost to Employer only and not included in Part 2).

Employer's Contributions to Pension Funds	Managers, Professionals & Associate Professionals €	Clerical, Sales & Service Workers €	Production, Transport Workers, Craft & Tradespersons, Other Manual Workers €
All employees (including apprentices/trainees)	[] [] [] [] []	[] [] [] [] []	[] [] [] [] []

Part 5 - Total Other Employer's Contributions for ALL EMPLOYEES, rounded to nearest Euro (cost to Employer only and not included in Part 2). Figures are required separately for Employer's Statutory PRSI, Income Continuance Insurance, redundancy payments & other employee related payments.

Total Other Contributions	Managers, Professionals & Associate Professionals €	Clerical, Sales & Service workers €	Production, Transport Workers, Craft & Tradespersons, Other Manual Workers €
Full-Time and Part-Time Employees			
Employer's Statutory PRSI (excluding apprentices/trainees)	[] [] [] [] []	[] [] [] [] []	[] [] [] [] []
Income continuance insurance (cost to employer)	[] [] [] [] []	[] [] [] [] []	[] [] [] [] []
Redundancy payments	[] [] [] [] []	[] [] [] [] []	[] [] [] [] []
Other employee-related payments (study grants, etc.)	[] [] [] [] []	[] [] [] [] []	[] [] [] [] []
Apprentices/Trainees			
Total social security contributions for apprentices/trainees	[] [] [] [] []	[] [] [] [] []	[] [] [] [] []

P.T.O →

PLEASE REFER TO INSTRUCTIONS FOR ASSISTANCE IN COMPLETING THIS FORM

Part 6 - Total Cost to the Employer of Benefits provided to Employees (excluding Apprentices/Trainees), rounded to nearest Euro.

Other Benefits To Employees	Managers, Professionals & Associate Professionals €	Clerical, Sales & Service Workers €	Production, Transport Workers, Craft & Tradespersons, Other Manual Workers €
Full-Time and Part-Time Employees			
Private use of company cars			
Stock options & Share purchase schemes			
Voluntary sickness insurance (VHI, Laya Healthcare, etc)			
Staff housing			
Other free or subsidised benefits (Please refer to instructions for examples)			

Part 7 - Total Subsidies and Refunds Received for All EMPLOYEES (including Apprentices/Trainees), rounded to nearest Euro.

*See instructions for further details on refunds.

Part 8 - Response Burden.

As part of the effort to measure the burden on respondents when filling out survey forms, you are asked to indicate across how long (i.e. how many minutes) it took to complete this form.

10 / 10

COMMENTS

Please make any comments that would help us interpret the data provided and avoid further queries. In particular, if there are changes from the previous quarter to the areas below, please tick the appropriate box and provide a brief explanation.

- Number of pay weeks
 - Total hours worked (eg reduction in working week)
 - Hourly rates of pay
 - Number of persons employed



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THANK YOU FOR COMPLETING THIS FORM

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