

Worker Protection (Regular Part-Time Employees) Act, 1991



Number 5 of 1991

WORKER PROTECTION (REGULAR PART-TIME EMPLOYEES) ACT, 1991

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Acts Referred to

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[Unfair Dismissals Act, 1977](#) 1977, No. 10

[Worker Participation \(State Enterprises\) Act, 1977](#) 1977, No. 6

[Worker Participation \(State Enterprises\) Act, 1988](#) 1988, No. 13

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Number 5 of 1991

WORKER PROTECTION (REGULAR PART-TIME EMPLOYEES) ACT, 1991

AN ACT TO EXTEND CERTAIN PROVISIONS OF ACTS RELATING TO EMPLOYMENT TO EMPLOYEES WHO ARE NORMALLY EXPECTED TO WORK NOT LESS THAN 8 HOURS PER WEEK FOR AN EMPLOYER AND, WHERE APPROPRIATE, HAVE SO WORKED FOR NOT LESS THAN 13 WEEKS CONTINUOUSLY FOR THE EMPLOYER, AND TO PROVIDE FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID. [26th March, 1991]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation. 1.—(1) In this Act—

“*the Act of 1967*” means the [Redundancy Payments Act, 1967](#) ;

“*the Act of 1984*” means the [Protection of Employees \(Employers' Insolvency\) Act, 1984](#) ;

“*excluding provision*” means—

- (a) (i) subsection (1) of section 4 of the Act of 1967 in so far as it has the effect of excluding employees from the application of that Act by virtue of the Social Welfare (Subsidiary Employments) Regulations, 1979 ([S.I. No. 127 of 1979](#)), the Social Welfare (Employment of Inconsiderable Extent) Regulations, 1991 ([S.I. No. 28 of 1991](#)), or any other regulations for the time being prescribed by the Minister under *subsection (3) (a)* of this section, or

(ii) subsection (2) of the said section 4,

(b) [section 3](#) (1) (a) of the [Minimum Notice and Terms of Employment Act, 1973](#) ,

(c) (i) in relation to annual leave entitlement, [section 3](#) of the [Holidays \(Employees\) Act, 1973](#) ,
in so far as it has the effect of excluding employees from the application of that Act
by reference to the number of hours worked, or

(ii) in relation to public holiday entitlement, section 4 (2) of that Act,

(d) the definition of “employee” in [section 1](#) (as amended by the [Worker Participation \(State Enterprises\) Act, 1988](#)) of the [Worker Participation \(State Enterprises\) Act, 1977](#) , in so far as it has the effect of excluding employees from the application of that Act by reference to the number of hours worked,

(e) paragraph 8 (as amended by the Act of 1984) of the [First Schedule](#) to the [Minimum Notice and Terms of Employment Act, 1973](#) , as applied for the purposes of the [Unfair Dismissals Act, 1977](#) , by virtue of section 2 (4) of the latter Act,

(f) (i) the definition of “employee” in [section 2](#) (1) of the [Maternity Protection of Employees Act, 1981](#) , in so far as it has the effect of excluding employees from the application of that Act by virtue of the Social Welfare (Subsidiary Employments) Regulations, 1979, the Social Welfare (Employment of Inconsiderable Extent) Regulations, 1991, or any other regulations for the time being prescribed by the Minister under *subsection (3) (a)* of this section, or

(ii) paragraph (a) of the definition of “employer” in section 2 (1) of that Act,

or

(g) section 3 of the Act of 1984, in so far as it has the effect of excluding employees from the application of that Act by virtue of the Social Welfare (Subsidiary Employments) Regulations, 1979, the Social Welfare (Employment of Inconsiderable Extent) Regulations, 1991, or any other regulations for the time being prescribed by the Minister under *subsection (3) (a)* of this section;

“*the Minister*” means the Minister for Labour;

“*regular part-time*”, in relation to an employee under a relevant enactment, means an employee who works for an employer and who—

(a) has been in the continuous service of the employer for not less than 13 weeks, and

(b) is normally expected to work not less than 8 hours a week for that employer,

and to whom, but for this Act, a provision of the relevant enactment would not apply because of an excluding provision;

“*relevant enactment*” means—

(a) the Redundancy Payments Acts, 1967 to 1990,

- (b) the Minimum Notice and Terms of Employment Acts, 1973 and 1984,
- (c) the [Holidays \(Employees\) Act, 1973](#) ,
- (d) the Worker Participation (State Enterprises) Acts, 1977 and 1988,
- (e) the [Unfair Dismissals Act, 1977](#) ,
- (f) the [Maternity Protection of Employees Act, 1981](#) , or
- (g) the Protection of Employees (Employers' Insolvency) Acts, 1984 and 1990;

“*the Tribunal*” means the Employment Appeals Tribunal.

(2) References in this Act to an employee or to an employer shall be construed, as is appropriate in the circumstances, by reference to an employee or an employer, respectively, for the purposes of one or more than one relevant enactment as amended by this Act.

- (3) (a) The Minister may, for the purposes of *paragraphs (a) (i), (f) (i) and (g)*, or any of them, of the definition of “*excluding provision*”, by order prescribe any regulations made by the Minister for Social Welfare and to which either or both subsection (1) of section 4 of the Act of 1967 and section 3 of the Act of 1984 relates and may by order amend or revoke any order so prescribing.
- (b) The Minister may by order amend the definition of “*regular part-time*” so as to alter either or both the minimum number of weeks of continuous service and the minimum number of hours a week that a person is normally expected to work, and may so amend where that definition has been previously amended by virtue of this subsection.
- (c) Where an order is proposed to be made under this subsection, a draft thereof shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

Continuous service.

2.—(1) For the purpose of calculating the 13 weeks continuous service, with an employer referred to in the definition of “*regular part-time*”, the provisions of the [First Schedule](#) to the [Minimum Notice and Terms of Employment Act, 1973](#) , shall apply as if—

- (a) references to employer and employee were to be construed in accordance with [section 1](#) (2) of this Act, and references to employment and cognate words were construed accordingly, and
- (b) the reference to “*eighteen hours*” in paragraph 8 of that Schedule were a reference to “*8 hours*”.

(2) Notwithstanding *subsection (1)* of this section, the Tribunal shall have a discretion, when hearing a dispute referred to it under [section 5](#) (1) of this Act, to consider whether—

- (a) dismissal, whenever occurring, of an employee by the employer followed by re-employment of the employee within 26 weeks of such dismissal, or

(b) reduction, whenever occurring, of the weekly working hours of an employee by the employer,

was used by the employer for the purpose of avoiding obligations arising or likely to arise by virtue of this Act and, where the Tribunal considers that such dismissal or reduction was so used, it shall be deemed not to operate so as to break the continuity or affect the computability of service of the employee.

(3) (a) Where, for the purpose of the application of any relevant enactment or part thereof, a period of continuous service (being service in accordance with the provisions, however expressed, of that enactment) of not less than 13 weeks is required, then in ascertaining the period under that enactment the 13 weeks continuous service referred to in *subsection (1)* of this section shall be included as if it were 13 weeks continuous service in accordance with the provisions, however expressed, of that enactment.

(b) For the purpose of calculating the part of a period of continuous service to which *paragraph (a)* of this subsection relates, but which is not calculable in accordance with *subsection (1)* of this section, that part shall—

- (i) in respect of the Act of 1967, be calculated under that Act as if the reference therein in section 4 (2) (as amended by the Act of 1984) to “18 hours” were a reference to “8 hours”,
- (ii) in respect of the [Minimum Notice and Terms of Employment Act, 1973](#), be calculated as if the reference in paragraph 8 of the First Schedule to that Act (as so amended) to “eighteen hours” were a reference to “8 hours”,
- (iii) in respect of the [Unfair Dismissals Act, 1977](#), be calculated as if the reference in the said paragraph 8 of the said First Schedule (as so amended and as applied for the purposes of the said Act by virtue of section 2 (4) thereof) to “eighteen hours” were a reference to “8 hours”.

(4) Except where provided for by this Act, no benefit or right shall accrue under any relevant enactment, including the [Holidays \(Employees\) Act, 1973](#), to a regular part-time employee in respect of the 13 weeks continuous service referred to in *subsection (1)* of this section and no period shall be ascertained so as to include all or any part of the said 13 weeks.

(5) The provisions of this section are, in so far as they concern matters to which the European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations, 1980 ([S.I. No. 306 of 1980](#)), relate, in addition to and not in substitution for those Regulations.

Application of relevant enactments.

3.—Subject to [section 2](#) of this Act and where appropriate, each relevant enactment, other than the [Holidays \(Employees\) Act, 1973](#), shall apply to a regular part-time employee in the same manner as it applies, other than by virtue of this Act, to an employee to whom that enactment relates.

Application of Act of 1973.

4.—(1) Subject to [section 2](#) of this Act and to the other provisions of this section and where appropriate, the Act of 1973 shall apply to a regular part-time employee in the same manner as it applies, other than by virtue of this Act, to an employee to whom the Act of 1973 relates.

(2) Notwithstanding *subsection (1)* of this section, subsections (2) and (3) of section 3, subsection (2) of section 4 and subsection (2) of section 5 of the Act of 1973 shall not apply to any regular part-time employee.

(3) For the purpose of the application of the Act of 1973 to regular part-time employees, that Act shall have effect—

(a) in the case of subsection (1) of section 3, as if that subsection read as follows:

“(1) An employee shall be entitled to paid leave in respect of a leave year (in this Act referred to as annual leave) at a rate of six hours for every 100 hours worked and to proportionately less where there are fewer hours worked.”,

(b) in the case of subsection (7) of section 3, as if that subsection read as follows:

“(7) For the purposes of subsection (1) a day of annual leave shall be taken as if the employee worked thereon the hours he would have worked if not on leave.”,

(c) in the case of paragraphs (a) and (b) of subsection (5) of section 3, as if those paragraphs read respectively as follows:

“(a) Where there are eight or more months of service, annual leave shall, subject to any registered employment agreement, employment regulation order or agreement with the employee's trade union, include an unbroken period equivalent to—

(i) the leave entitlement earned over the first eight months of service, or of the appropriate leave year, or

(ii) two-thirds of the total leave entitlement earned in the first year of service, or subsequently in the appropriate leave year,

and for the purpose of ascertaining an unbroken period of annual leave, regard shall be had to the average period over which a number of hours (being the same number of hours as those representing the unbroken period of annual leave) would be worked.

(b) When ascertaining for the purposes of this subsection, whether a period is a period of unbroken leave, the fact that a day is a public holiday or a day of illness shall be disregarded.”,

(d) in the case of subsection (1) of section 5, as if that subsection read as follows:

“(1) Where—

(a) an employee ceases to be employed, and

(b) annual leave is due to him in respect of the current leave year or, in case the cesser occurs during the first half of that year, in respect of that year, the previous leave year or both,

the employer shall pay compensation to him in respect of the annual leave at a rate which is proportionate to the normal weekly rate.”,

(e) in the case of subsection (3) of section 5, as if that subsection read as follows:

“(3) Where employment ceases during the five weeks ending on the day before a public holiday and the employee has, during the part of that period before the cesser, worked for the employer during at least four of those five weeks, the employer shall pay compensation to him in respect of the public holiday consisting of an extra day's pay.”,

and

(f) in the case of paragraph (b) of subsection (3) of section 6, as if that paragraph read as follows:

“(b) be at a rate which is proportionate to the normal weekly rate of remuneration, and”.

(4) For the purposes of the application of this Act to the Act of 1973, nothing in this Act shall be construed as permitting any ascertainment of annual leave entitlement or public holiday entitlement from a date before the commencement date provided for in an order under [section 8](#) (9) of this Act and which relates to the Act of 1973.

(5) In this section “*the Act of 1973*” means the [Holidays \(Employees\) Act, 1973](#) .

Disputes as to continuity of service, etc.

5.—(1) Any dispute arising in respect of the calculation of the 13 weeks continuous service to which [section 2](#) (1) of this Act relates, and any dispute relating to the number of hours a week actually worked or normally expected to be worked, shall be referred in the prescribed manner to the Tribunal.

(2) Subject to a right of appeal to the High Court on a question of law, the determination of the Tribunal by virtue of this section shall be final.

(3) In this section “*prescribed*” means prescribed by regulations made by the Minister under [section 6](#) of this Act.

Regulations relating to disputes.

6.—(1) The Minister may make regulations for the purpose of giving effect to [section 5](#) of this Act.

(2) Without prejudice to the generality of *subsection (1)* of this section, regulations made under this section may provide for all or any of the following matters, that is to say:

(a) the procedure to be followed regarding the referral of disputes under [section 5](#) of this Act to the Tribunal,

(b) notices relating to hearings by the Tribunal,

(c) the times and places of hearings by the Tribunal,

(d) the representation of parties attending hearings by the Tribunal,

(e) the procedure regarding the hearings by the Tribunal,

(f) the publication and notification of determinations of the Tribunal,

(g) the award by the Tribunal of costs and expenses in relation to such disputes as aforesaid and the payment thereof.

(3) Pending the making of regulations under this section, the regulations made by the Minister under [section 17](#) of the [Unfair Dismissals Act, 1977](#) , for the purposes of section 8 (8) of that Act, shall apply, with such modifications as are necessary, as if they had been made and duly laid in accordance with this section.

(4) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done there-under.

Expenses.

7.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title,
collective
citations,
constructions
and
commencement.

8.—(1) This Act may be cited as the Worker Protection (Regular Part-Time Employees) Act, 1991.

(2) In so far as it relates to the Redundancy Payments Acts, 1967 to 1990, this Act and those Acts shall be construed together and may be cited together as the Redundancy Payments Acts, 1967 to 1991.

(3) In so far as it relates to the Minimum Notice and Terms of Employment Acts, 1973 and 1984, this Act and those Acts shall be construed together and may be cited together as the Minimum Notice and Terms of Employment Acts, 1973 to 1991.

(4) In so far as it relates to the [Holidays \(Employees\) Act, 1973](#) , this Act and that Act shall be construed together and may be cited together as the Holidays (Employees) Acts, 1973 and 1991.

(5) In so far as it relates to the Worker Participation (State Enterprises) Acts, 1977 and 1988, this Act and those Acts shall be construed together and may be cited together as the Worker Participation (State Enterprises) Acts, 1977 to 1991.

(6) In so far as it relates to the [Unfair Dismissals Act, 1977](#) , this Act and that Act shall be construed together and may be cited together as the Unfair Dismissals Acts, 1977 and 1991.

(7) In so far as it relates to the [Maternity Protection of Employees Act, 1981](#) , this Act and that Act shall be construed together and may be cited together as the Maternity Protection of Employees Acts, 1981 and 1991.

(8) In so far as it relates to the Protection of Employees (Employers' Insolvency) Acts, 1984 and 1990, this Act and those Acts shall be construed together and may be cited together as the Protection of Employees (Employers' Insolvency) Acts, 1984 to 1991.

(9) This Act shall come into operation on such day or days as may be fixed there for by order or orders of the Minister either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

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