

## NERA Activity from January to June 2012

### Awareness & Information:

In the period January to June 2012 the NERA call centre provided information to over 33,908 people, a decrease of 42% on the 2011 figure of 58,514. 27,782 callers were dealt directly by experienced Information Officers and 6,126 by the NERA 24 hour recorded information service. This reduction (which is related to transfer of redundancy claims calls to the Department of Social Protection in 2011) has enabled NERA to fulfil the Workplace Relations Customer Services role under the Workplace Relations Reform Programme and to take responsibility for Employment Agency licences [see below].

Employees and former employees accounted for 76% of callers, while an estimated 16% were employers. Redundancy, working hours, terms of employment, payment of wages and unfair dismissal represented the highest categories of queries dealt with.

The Workplace Relations Customer Services became operational at the beginning of 2012. This Unit, based in NERA, incorporates the existing NERA Information services. In this regard 6,953 employment rights complaints were received by the WRCS in the first six months of 2012. Full breakdown of the WRCS statistics are contained in the second issue of the Workplace Relations Reform Quarterly Newsletter available to download at [www.workplacelrelations.ie](http://www.workplacelrelations.ie).

### NERA Workplace Inspections:

(See breakdown by Sector and Legislation on Page 2)

NERA carries out workplace inspections to ensure compliance with employment rights legislation. In the period January to June 2012 a total of 2,250 inspection cases were completed involving almost 33,000 employees. This compares to 2,359 cases in the same period on 2011. The amount of unpaid wages recovered was €426,818, compared to €1,066,631 in 2011.

### Prosecutions:

In the period January to June 2012 forty five cases were referred for prosecution (in Q2 2011 forty two cases were referred). 31 convictions were recorded in cases heard by the Courts over the period resulting in fines of €77,400 being imposed and arrears of wages of over €32,800 being awarded to employees.

### Employment Agency Licences:

Under the Employment Agency Act, 1971 an Employment Agency must hold a licence if it is to carry on its business. In the six month period to end June 2012 two hundred and forty seven applications for licences were received. 153 licences were issued in same period.

## Summary of Inspections & Breaches Detected by Industry Sector January to June 2012

Sector	No of Inspections Concluded	Compliance Rate%	Unpaid Wages Recovered (€)
AGRICULTURE	62	42%	6,879
CATERING	215	42%	61,513
RETAIL GROCERY	61	48%	17,861
HOTELS	47	38%	70,141
CONTRACT CLEANING	14	42%	2,907
SECURITY	11	64%	0
CONSTRUCTION	130	51%	85,468
ELECTRICAL	19	63%	35,226
OTHER	18	66%	16,342

## Summary of Inspections & Breaches by Employment Legislation: Jan- Mar 2012

Legislation	No of Inspections Concluded	Compliance Rate%	Unpaid Wages Recovered (€)
NATIONAL MINIMUM WAGE	668	51%	130,481
PROTECTION OF YOUNG PERSONS	1005	100%	n/a

### Enforcement of EAT/Labour Court Orders:

In the period January to June 2012 twenty seven new cases were opened and 31 cases were concluded. 95 such cases were on hands at the end of June 2012.

### Protection of Young Persons

#### Licences:

92 licences, allowing children (i.e. under 16s) to be employed in cultural, artistic, sports or advertising work, were issued in the period January to June 2012 in respect of 196 children working in the arts/TV/film.

### Employment Permits Inspections:

NERA inspectors are authorised officers under the Employment Permits Acts. Compliance checks under this legislation are an integral element of all NERA inspections. Joint inspections may also be carried out as part of investigations involving Revenue, Department of Social Protection staff and An Garda Síochána.

In the period January and June 2012 two hundred and forty employers were found to be in breach of the Employment Permits Acts with 496 persons detected working without legal authorisation.

## Recording hours worked - Tachographs are not a sufficient record of working hours:

Details relating to employees' hours of work must be kept in the manner prescribed by [S.I. 473 of 2001](#). This outlines the for records of working hours required to be kept under [Section 25 of the Organisation of Work Time Act, 1997](#). It requires an employer to keep an OWT 1 form or a form to substantially like effect where there is no clocking facility in place for employees.

Transport companies should note that these records are required to be kept in addition to tachographs. In *Kyle International Ltd v Jibah*, a case where an employer produced tachographs to show compliance with the Organisation of Working Time Act, the Labour Court found that the employer '*failed to discharge the obligations placed upon him by virtue of Section 25(1) of the Act*'. In relation to tachographs records the Court found that they have '*no probative value for the purposes of establishing compliance with the provision of the Act*'. Clearly tachographs do not record the level of detail required to demonstrate compliance with the Organisation of Work Time Act, 1997.

Employers are required to keep the following records in relation to employees:

- Employer Registration Number with the Revenue Commissioners.
- List of all employees including: full name, address and PPS Number for each employee (full-time and part-time).
- Terms of employment for each employee.

- Payroll details (gross to net, rate per hour, overtime, deductions, shift and other premiums and allowances, commissions and bonuses, service charges, etc.).
- Evidence that the employer has provided payslips to staff
- Employees' job classification.
- Dates of commencement and where relevant, termination of employment.
- Hours of work for each employee (including starting and finishing times).
- Register of employees under 18 years of age.
- Whether board and/or lodgings are provided and relevant details.
- Holidays and Public Holiday entitlements received by each employee.
- Any documentation necessary to demonstrate compliance with employment rights legislation.

## Restrictions on Bulgarian and Romanian access to the Irish labour market removed

On 20 July 2012 the Government announced that that it had decided immediately to bring forward the transition date for access to the labour market for Bulgarian and Romanian nationals. This means restrictions on access to the Irish labour market imposed on Romanian and Bulgarian nationals have been removed and nationals of these countries no longer require employment permits to work in Ireland.

## Overnight workers entitlement to payment for all hours worked

The question as to whether or not a worker is entitled to payment of the national minimum wage in respect of those periods during which he or she is not actually working but is nevertheless required to be present at his or her place of work has regularly been raised in both NERA inspections and in information requests made to NERA Information officers. This working pattern would be a feature of employment in the carer and residential care sectors where employees receive either a fixed hourly rate for the hours that the employer regards as working hours or a flat rate payment to cover the entire shift. Working hours under the National Minimum Wage Act, 2000 are defined as '*total hours during which the employee carries out or performs the activities of his or her work at the employee's place of employment or is required by his or her employer to be available for work there and is paid as if the employee is carrying out or performing the activities of his or her work*'.

This matter has been tested in the Courts in a number of cases in different jurisdictions. In the Jaeger case (C-151/02) the European Court of Justice ruled that on-call duty performed by a person where he or she is required to be physically present at the place of work must be regarded as constituting working time, even where the person concerned is permitted to rest at his place of work during the periods when his or her services are not required. In the case C-303/98 (SIMAP) the court determined that time spent on-call where the worker must be contactable at all times but where he or she was not required to be physically present at his or her place of work did not constitute working time.

In a more recent judgement (*Idea Services Ltd vs Phillip William Dickson*, CA405/2010) the Court of Appeal of New Zealand upheld a decision of the Employment Court of New Zealand and found that Mr Dickson was working while on sleepover and pay for that period must comply with the requirements of the NZ Minimum Wage Act 1983. The Court also referenced 2 UK cases (*British Nursing Association v Inland Revenue* and *Scottbridge Construction Ltd v Wright*) which came to similar conclusions.

The Labour Court has also examined the matter. In *Slieve Bloom Tours v O'Reilly* (MWD 9/2010) and found that that a bus driver who was not paid for periods of time between runs '*was required to be in attendance during the break periods referred to. He was in charge of the bus at such times. The Court is satisfied that the hours worked including the break periods referred to but excluding a period of one hour for lunch, come within the definition of "working time" as defined by section 8 of the Act*'.

Consequently it is NERA's view that the working hours of such employees are the entire period in respect of which of which they are required to be present in the place of employment and such employees are entitled to be remunerated for those hours at the statutory minimum rate applicable. Employers in such cases would also need to be aware of their obligations regarding employees entitlements to daily and weekly rest periods under the Organisation of Working time Act, 1997.

### NERA Contact Details

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Prosecution & Enforcement:

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