



## NERA INFORMATION SERVICES SUMMARY

NERA Information Services dealt with over 112,600 telephone enquiries during the period January to September 2009. This is an increase of over 37% on the same period in 2008. Over 8,800 email enquiries were dealt with during the same period. The most requested information categories continue to be redundancy, holiday/public holidays, terms of employment and payment of wages.

NERA's website, [www.employmentrights.ie](http://www.employmentrights.ie), continues to be a key source of employment rights information and has generated over 1.1 million web impressions in the period January to September 2009.

To date in 2009, NERA has participated in 19 national and local conferences, exhibitions and seminars. These events were hosted by organisations such as the Small Firms Association, IMPACT, IBEC, ICTU, the Migrant Rights Centre of Ireland, Chambers of Commerce, Enterprise Boards and Citizens Information Centres.

## LABOUR COURT CLARIFIES POSITION OF CATERING ERO'S

The Labour Court recently clarified that the Catering Employment Regulation Orders apply in relation to certain establishments. The decisions are:

- ❑ Butlers Chocolate Limited (Labour Court Decision No. DEC 091). In this case the Labour Court issued a binding decision relating to the application of the Catering ERO's.
- ❑ Busy Bee Bagels Ltd trading as 'the Bagel Bar' (Labour Court Decision No. DEC 092). The Court made a binding decision regarding the application of the Catering ERO's to shopping centre foodcourts.

Full details of these binding decisions are available at [www.labourcourt.ie](http://www.labourcourt.ie)

## FÁILTE IRELAND DEVELOPS 'COMPLIANCE IN LAW' GUIDES FOR THE TOURISM AND HOSPITALITY INDUSTRY

Fáilte Ireland, in collaboration with NERA, has developed a series of employment law guides for businesses in the tourism and hospitality industry. The guides come complete with case studies and a resource pack containing sample employment record templates which may be used by all sectors of the Industry. Individual guides are available for hotels, restaurants, pubs and event catering and golf as well as attractions and amenities with and without retail outlets. These guides can be accessed via the NERA website (<http://www.employmentrights.ie/en/aboutnera/latestnewsevents>) or by contacting:

Fáilte Ireland  
88-95 Amiens St, Dublin 1  
Tel: 1850 256 256  
[www.failteireland.ie](http://www.failteireland.ie)

## NERA INSPECTION SERVICES

To date in 2009 NERA Inspectors have carried out a total of 18,273 calls, interviews and inspections and unpaid wages due to employees totalling €1,474,650 were recovered

The tables below provide a breakdown of NERA's provisional inspection figures for the period January to September 2009. Table 1 gives a breakdown of inspections conducted within the industry sectors governed by Employment Regulation Orders (EROs) or Registered Employment Agreements (REAs). These industry-specific orders and agreements cover minimum rates of pay and other conditions of employment for these industries. Table 2 gives a breakdown of inspections conducted with respect to general employment rights legislation. It should be noted that the two categories are not mutually exclusive and that each of the industries are also covered by general employment legislation. In almost all cases inspections are carried out under more than one piece of legislation. Accordingly, the number of employers inspected will be significantly less than the number of inspections carried out. The figures given for the percentage of compliance is based on the number of inspections carried out.

NERA Inspectors have also been appointed as Authorised Officers under the Employment Permits Acts 2003 and 2006. Since July 2009 345 employment permit compliance checks have been undertaken as part of their inspection role.

**Table 1**

<b>Summary of Inspections and Compliance Level by Industry Sector – to date in 2009</b>			
<b>Sector</b>	<b>No of Inspections</b>	<b>Compliance Rate (%)</b>	<b>Unpaid Wages Recovered (€)</b>
Agriculture	43	60%	€76,584
Catering	299	23%	€471,980
Retail Grocery & Allied Trade	200	27%	€224,040
Hotels	82	28%	€59,961
Contract Cleaning	168	46%	€90,026
Security	35	49%	€56,346
Construction	260	43%	€169,354
Electrical REA	11	27%	€9,309
Other	68	85%	€51,248

**Table 2**

<b>Summary of Inspections and Compliance Level by Employment Legislation – to date in 2009</b>			
<b>Sector</b>	<b>No of Inspections</b>	<b>Compliance Rate (%)</b>	<b>Unpaid Wages Recovered (€)</b>
National Minimum Wage	2,126	93%	€167,970
Payment of Wages	2,987	86%	€0
Organisation of Working Time	3,001	53%	€97,832
Protection of Young Persons	6,121	99%	€0
Employment Permits	345	51%	€0
Other	350	51%	€0

## NEW EMPLOYMENT REGULATION ORDERS FOR HOTELS, CATERING AND LAW CLERKS

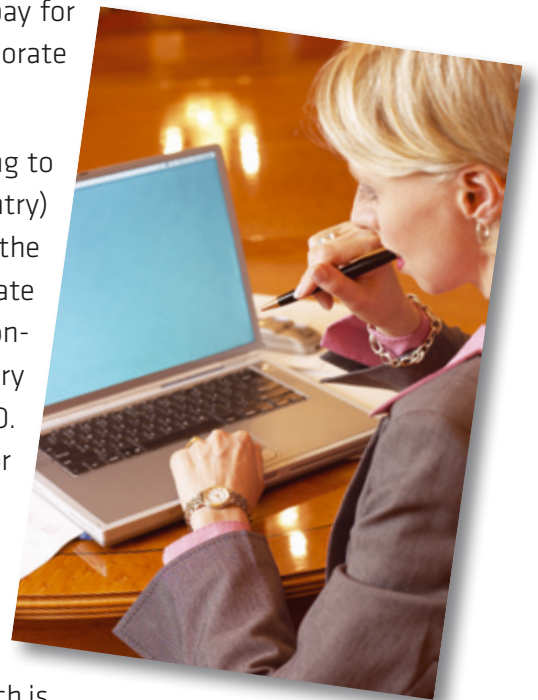
The following new Employment Regulation Orders were recently enacted:

- ❑ Law Clerks (22 June 2009).
- ❑ Catering Dublin/Dun Laoghaire and Catering Country (29 June 2009).
- ❑ Hotels (16 September 2009).

The new Law Clerks ERO sets out revised minimum weekly rates of pay for employees employed by solicitors and in law departments of Bodies Corporate (the ERO does not apply to solicitors or solicitors apprentices).

Under the new Catering EROs (there are 2 separate EROs, one applying to the Dublin/Dun Laoghaire area and another covering the rest of the Country) the rates of pay and employment conditions for employees throughout the country in the catering sector have been harmonised. The premium rate for Sunday work is now fixed at time and a third for both areas. A non-contributory sick pay scheme has also been introduced under the Country ERO, which was already in force under the Dublin/Dun Laoghaire ERO. Other changes apply in the areas of spreadover duty and eligibility for the night duty pay rate.

With regard to the Hotels ERO, in addition to pay increases for employees covered by the Order there are also new conditions introduced with regard to Sunday working. Work carried out on a Sunday as part of normal rostered hours is now paid at time and a third. Sunday work which is in addition to the normal 78 hour rostered fortnight is payable at time and a half. The new Order also provides that where prior to its introduction a more favourable rate of payment in respect of Sunday working was payable, this rate shall continue to be paid to that worker unless otherwise agreed between both the employer and the employee (and/or their representatives). Written records of any such Agreements must be retained by the employer and copies given to the employee and/or their representatives.



## SUMMARY OF PROSECUTION ACTIVITY

To date in 2009, 61 cases were referred to NERA solicitors for prosecution. Currently there are 55 cases awaiting decisions upon referral for prosecution.

95 cases were concluded in this period, some of these cases would have been initiated in previous years.

## SUMMARY OF ENFORCEMENT ACTIVITY

Employment rights legislation provides for the bringing of proceedings for the purposes of enforcing awards of both the Labour Court and the Employment Appeals Tribunal. A total of 47 new cases were opened to the end of September 2009. 43 cases were concluded in period January to September 2009.

## COMMON EMPLOYMENT RIGHTS ISSUES AND QUERIES

Whilst acknowledging that the interpretation of legislation is solely within the remit of the Courts, in order to carry out its employment rights compliance role NERA is required to take a view on the application of certain provisions in legislation. The following issues have frequently been brought to NERA's attention for clarification:

### Payment in lieu of leave or 'Rolled Up' leave

This deals with arrangements where an employer includes payment in lieu of annual leave in an employee's ongoing wages/salary by the addition of a premium to the employee's base rate of pay.

Under the Organisation of Working Time Act 1997 an employee is entitled to be paid in advance at the commencement of his/her annual leave (S 2). The Act (S 23) also provides that 'payment in lieu' of (untaken, accumulated) annual leave can be made on the cessation of employment. The Act does not provide for 'payment in lieu' of annual leave in any other circumstances.

It follows that payment in lieu of leave or 'rolled up' leave as part of an employee's normal pay is not in accordance with the applicable provisions of the Act. NERA's position with regard to this matter accords with the jurisprudence of the Labour Court on the matter.

### Composite Rates of Pay

Where an employer pays a composite pay rate to employees to cover the appropriate Statutory Minimum Rate (SMR) of pay and all premiums and overtime due to the employee, he or she may be required to provide the calculations or information to demonstrate:

- That the total composite amount paid to each employee is not less than the Statutory Minimum Rate of pay.
- All premia and overtime payments due to the employee having regard to the hours, days and any overtime worked by each employee.

The obligation for employers to keep records to show compliance with the terms of an ERO is contained in the 1946 Industrial Relations Act and the record keeping obligation with regard to REA's is provided for in the 1990 Industrial Relations Act. All other record keeping requirements necessary to demonstrate compliance with the appropriate legislation are contained in individual acts. Legislation also requires that the records must be retained for a period of three years.

### Paid Annual Leave for Part Time workers

Under the Organisation of Working Time Act 1997, employees are entitled to paid annual leave. This applies to both full-time and part-time workers. In the case of part-time workers, paid annual leave must be given on a day or days that the employee normally works. It is not sufficient to pay a part-time worker extra income in lieu of giving actual annual leave.

*For example, an employee normally works Monday, Tuesday & Friday from 2pm to 10pm – a total working week of 22.5 hours (excluding breaks). The employee has been in employment for 20 weeks. Calculating his or her annual leave, on the basis of 8% of hours worked, the employee has accumulated an annual leave entitlement of 36 hours (22.5 hours x 20 weeks x 8%).*

*As paid annual leave must be given on a normal working day, in the above example this means a paid day or days off on Monday, Tuesday or Friday. It is not an option for the employer to pay the employee for the 36 hours unless the employee is ceasing employment with him/her.*



### Contact Details

National Employment Rights  
Authority,  
O'Brien Road, Carlow.  
Telephone: (059) 917 8800,  
Fax: (059) 917 8912  
[www.employmentrights.ie](http://www.employmentrights.ie)

### NERA Information Services

Telephone: (059) 917 8990,  
Lo-Call: 1890 80 80 90  
Fax: (059) 917 8909

### NERA Inspection Services

Telephone: (059) 917 8900  
Lo-Call: 1890 220 100

### NERA Enforcement & Prosecution Services

Telephone: (059) 917 8890  
Lo-Call: 1890 220 200

Callers should note that the rates charged for the use of 1890 (Lo-Call) numbers may vary among different service providers.



An Roinn Fiontar, Trádála agus Fostaíochta  
Department of Enterprise, Trade and Employment