



An Coimisiún um Chaidreamh san Áit Oibre
Workplace Relations Commission

Workplace Relations Commission – Guidelines on Oaths and Affirmations – July 2021

1 Background:

- 1.1 In *Zalewski v. Adjudication Officer & Ors*,¹ the Supreme Court unanimously held that the absence of a provision for an Adjudication Officer to administer an oath or affirmation and the absence of a possibility of punishment for giving false evidence, were both inconsistent with the Constitution of Ireland. The Workplace Relations (Miscellaneous Provisions) Act 2021² was subsequently introduced to address these shortcomings. Together with the Redundancy Payments Act 1967 and the Workplace Relations Act 2015, the Workplace Relations (Miscellaneous Provisions) Act 2021 sets out various matters relating to the conduct of Adjudications before the Workplace Relations Commission. These guidelines are intended to supplement the aforementioned legislation and do not supplant it. In case of conflict, the legislation shall take precedence over these guidelines.
- 1.2 These guidelines only apply to Adjudications involving the administration of justice and not to disputes referred to the WRC under the Industrial Relations Act 1969.

2 Definitions:

- 2.1 In these guidelines the following terms have the following meanings:

“Adjudication” means a complaint referred for hearing before the WRC pursuant to section 41 of the Workplace Relations Act 2015 or related enactments.

“Adjudication Officer” means a person appointed under section 40 of the Workplace Relations Act 2015.

“Witness” means a person who gives evidence, including on oath or by affirmation, before the Workplace Relations Commission.

“WRC” means the Workplace Relations Commission.

¹ [2021] IESC 24.

² Amending *inter alia* the Workplace Relations Act 2015; the Redundancy Payments Act 1967; the Unfair Dismissals Act 1977; the Protection of Employees (Employers’ Insolvency) Act 1984; the Employment Equality Act 1998; and the Equal Status Act 2000.

3 Information for Witnesses:

3.1 The following information is to help Witnesses know what to expect and make any necessary arrangements in advance of a hearing:

- (a) Witnesses should arrive, or log on, in good time for the scheduled hearing;
- (b) on arrival for a physical hearing, they should present themselves at reception, and not speak to other Witnesses about the case before or during the hearing;
- (c) for a remote hearing, they should introduce themselves to the Adjudication Officer, and not speak to other Witnesses about the case before or during the hearing;
- (d) they should inform the WRC in advance if they require an interpreter;
- (e) they may be required to swear an oath or make an affirmation and should inform the WRC if they wish to use their own holy book, or a holy book which is not the Old Testament, New Testament or Koran;
- (f) where the hearing is held remotely, the Witness should have their own holy book ready in the place they are dialling in from, or alternatively, they can refer to an appropriate e-book;
- (g) they should inform the WRC of any other special requirements or needs that they might have relevant to attending as a Witness; and
- (h) any requirements regarding interpretation, the oath, or special requirements be notified to the WRC 10 working days before the date of the Adjudication.

4 Before Commencing a Witness's Examination:

4.1 Before commencing a Witness's examination, the Adjudication Officer may:

- (a) Introduce themselves and explain to the Witness how their examination will proceed;
- (b) explain to the Witness that they must swear an oath or make an affirmation in front of the parties before they provide evidence (see further details below);
- (c) ensure that the Witness understands that, if they have any problems speaking in English or communicating through the interpreter provided, they should inform the Adjudication Officer;
- (d) inform the Witness that they may take time answering questions, and that they must inform the Adjudication Officer if they do not understand any question;
- (e) explain to the Witness that breaks may be taken, and if they require a break, for any reason, that they tell the Adjudication Officer; and

- (f) remind Witnesses who are in the middle of being cross examined and there is a break in the proceedings, that they are not permitted to discuss their evidence with their representative or anyone else before the hearing re-convenes.

5 Interpreters:

- 5.1 If necessary, a Witness should be provided with an interpreter who is able to ensure appropriate communication between the Witness, the Adjudication Officer and any other participant at the Adjudication.
- 5.2 If concerns arise in relation to the effectiveness and suitability of the interpreter, the Adjudication Officer will pause the Adjudication to clarify the matter and, if necessary, postpone the Adjudication to a later date.
- 5.3 Where the Adjudication Officer hears evidence on oath or by affirmation via an interpreter, the interpreter should be directed to swear the interpreter's oath or make an interpreter's affirmation. The appropriate forms of oath and affirmation are set out in the appendix to these guidelines. See the following section for more information on oaths and affirmations.

6 Oath / Affirmation:

- 6.1 The Adjudication Officer may take evidence on oath or affirmation.³
- 6.2 Children under 14 years of age and persons with a "mental disability" over 14 years of age are not required to take an oath or affirmation.⁴
- 6.3 An oath or affirmation is valid so long as the witness appreciates the solemnity of the occasion and the additional moral obligation to speak the truth, which arises in the situation.
- 6.4 The Adjudication Officer should explain to the Witness that an oath has religious significance and an affirmation does not, and that the Witness's evidence will be considered in the same way whether the evidence is given under oath or by affirmation.

³ Workplace Relations (Miscellaneous Provisions) Act 2021 amending the Workplace Relations Act 2015, s.41.12A; the Unfair Dismissals Act 1977, s.8(14); the Protection of Employees (Employers' Insolvency) Act 1984, s.9(4A); the Employment Equality Act 1998, s.79(8); the Equal Status Act 2000, s.25(2B); Pensions Act 1990; and Redundancy Payments Act 1967, s.39(17).

⁴ Children Act 1997, s.28(1) and s.28(3) - this applies to civil proceedings generally involving the administration of justice. For the purposes of the Children Act 1997, "mental disability" is elaborated upon at s.20 as "*a mental disability to such an extent that it is not reasonably possible for the person to live independently*". Regard should also be had to the Equal Status Act 2000, UN Convention on the Rights of Persons with Disabilities and developments in mental capacity legislation as remaining parts of the Assisted Decision-making (Capacity) Act 2015 are commenced.

- 6.5 An affirmation can be administered where the Witness objects to swearing an oath, either on the grounds of having no religious belief or because it is incompatible with their religious belief.⁵
- 6.6 The Adjudication Officer should explain to the Witness that by swearing an oath or making an affirmation, the Witness is promising to tell the truth, and that giving false evidence after doing so is a criminal offence punishable by way of imprisonment and / or fine.
- 6.7 The Adjudication Officer should explain to the Witness that, if they take a break or if the Adjudication is adjourned while they are providing evidence, they remain under oath or affirmation where applicable. However, if a considerable amount of time has elapsed, the oath or affirmation may be administered again.
- 6.8 For the purpose of the Witness swearing an oath or making an affirmation, the Adjudication Officer should provide the Witness with the wording either by reading out the phrases they must say or providing a card with the appropriate oath or affirmation, which the Witness should read. The appropriate forms of oath and affirmation are set out in the appendix to these guidelines.
- 6.9 The Witness should bring their own holy book to the Adjudication. Copies of the Old Testament, New Testament and Koran may be made available at the Adjudication. Certain holy books, such as the Koran, should be kept in a bag/box at all times and remain covered except when being handled by the Witness.
- 6.10 Where the Adjudication is held remotely, the Witness should have their own holy book ready in the place they are dialling in from, or alternatively, they can refer to an appropriate e-book.⁶

7 Witness Examination:

- 7.1 Witnesses may give evidence and can be cross-examined.
- 7.2 The Adjudication Officer may curtail the examination of a Witness which they consider repetitive or irrelevant and may curtail cross examination which they consider oppressive.
- 7.3 The Adjudication Officer may address questions to a Witness for the purpose of clarifying any incomplete or unclear part of their evidence.

⁵ Oaths Act 1888., s.1.

⁶ Section 31(1) Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020

Appendix - Forms of Oath and Affirmation

Witness - Oaths:

Christian Oath – Swear on New Testament:

Witness: I (witness name) swear by Almighty God that my evidence to the Workplace Relations Commission in this case shall be the truth, the whole truth and nothing but the truth.

Jewish Oath – Swear on Old Testament:

Witness: I (witness name) swear by Almighty God that my evidence to the Workplace Relations Commission in this case shall be the truth, the whole truth and nothing but the truth.

Islamic Oath – Swear on the Koran (which is covered by a cloth):

Witness: I (witness name) swear by Allah that my evidence to the Workplace Relations Commission in this case shall be the truth, the whole truth and nothing but the truth.

Other Oath – Swear on holy book:

Witness: I (witness name) swear by (name of deity) that my evidence to the Workplace Relations Commission in this case shall be the truth, the whole truth and nothing but the truth.

Witness - Affirmation:

Witness: I (witness name) do solemnly sincerely and truly declare and affirm that the evidence I shall give to the Workplace Relations Commission shall be the truth, the whole truth and, nothing but the truth.

Interpreter - Oath:

I (name) swear by Almighty God (or name other deity if applicable) that I shall well and truly interpret to the Workplace Relations Commission all matters and things as shall be required of me to the best of my skill and understanding.

Interpreter - Affirmation:

I (name) do solemnly declare that I shall well and truly interpret to the Workplace Relations Commission all matters and things as shall be required of me to the best of my skill and understanding.

An Athrá:

Moinnaím do Dhia Uilechumhachtach gurb í an fhírne, an fhírinne ghlan gan tada ach an fhírinne a bheidh i mo chuid fianaise