

NERA WEBSITE (www.employmentrights.ie)

NERA's website, www.employmentrights.ie, continues to be accessed by large numbers of people seeking employment rights information. Almost 700,000 web pages were visited by 93,000 visitors in the period January to June 2010. 60% of these visitors were new and 40% were return visitors.

In the period January to June 2010 the top five most popular guides downloaded from www.employmentrights.ie were:

- 1 **Holidays and Public Holidays-Organisation of Working Time Act, 1997**
- 2 **Protection of Employees (Part-Time Work) Act 2001**
- 3 **The Organisation of Working Time Act, 1997**
- 4 **Payment of Wages Act, 1991**
- 5 **Unfair Dismissals Acts, 1977 to 2007**

NERA INFORMATION SERVICES

NERA Information Services dealt with over 63,149 telephone enquiries during the first half of 2010, a decrease of about 13% on the same period in 2009. This fall is predominantly due to industrial action within the Civil Service during this period. 7,291 email enquiries were dealt to June 2010, compared with 5,973 emails dealt with in the same period in 2009.

KEEPING EMPLOYMENT RECORDS IT'S NOT JUST THE LAW, IT'MAKES GOOD BUSINESS SENSE

The statutory employment records required to demonstrate compliance with employment legislation are also in general the same records needed by employers for the payment of staff and for other business purposes. Recent research carried out on behalf of the Department of Enterprise Trade and Innovation into Employment Law Information Requirements confirmed that almost all employers surveyed indicated they would keep these records in order to manage their business whether or not they were required to do so by law. Lack of compliance with statutory record keeping, poor or incomplete records or failure to maintain records in the prescribed form are common breaches detected by NERA.

Lack of statutory records can have very serious consequences for employees in terms of lost or delayed pension, social welfare and redundancy entitlements. The consequences for employers can be equally as serious. In addition to failure to demonstrate compliance with employment law obligations, lack of statutory records makes it difficult for employers to defend themselves against allegations by their employees that the employers did not give them their entitlements.

Records necessary to demonstrate compliance include:

- Employer Registration Number
- List of all employees including name, address and PPS number of each employee

- Terms of employment for each employee
- Payroll details
- Evidence that pay slips are provided
- Employees' job classification
- Dates of commencement and, where relevant, termination
- Record of hours worked for each employee
- Register of employees under 18 years of age
- Whether board and lodging is provided
- Record of holidays and public holiday entitlements received by each employee



NERA INSPECTIONS

To end June 2010, NERA Inspectors carried out a total of 7,964 calls, interviews and inspections, involving 2,214 individual employers, and unpaid wages due to employees totalling €538,228 were recovered.

The tables below provide a breakdown of NERA's provisional inspection figures for the period January to June 2010. 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 under 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 in the period was 2,214. The figures given for the percentage of compliance are based on the number of inspections carried out under general employment rights legislation.

Table 1

SUMMARY OF INSPECTIONS AND BREACHES DETECTED BY INDUSTRY SECTOR – TO DATE IN 2010

Sector	No of Inspections	Compliance Rate (%)	Unpaid Wages Recovered (€)
Agriculture	27	30%	4,771
Catering	255	48%	94,114
Retail Grocery & Allied Trade	121	16%	108,925
Hotels	72	18%	19,970
Contract Cleaning	36	42%	12,528
Security	13	23%	54,497
Construction	191	43%	135,641
Electrical REA	18	38%	5,888
Other	33	42%	3,046

Table 2

SUMMARY OF INSPECTIONS AND BREACHES BY EMPLOYMENT LEGISLATION – TO DATE IN 2010

Sector	No of Inspections	Compliance Rate (%)	Unpaid Wages Recovered (€)
National Minimum Wage	816	94%	57,097
Payment of Wages	1,312	88%	0
Organisation of Working Time	1,314	47%	41,722
Protection of Young Persons	2,013	98%	0
Employment Permits Acts	816	73%	0
Other	3	67%	0



HOW NERA INSPECTIONS ARE CARRIED OUT

Most countries have some form of labour inspection system which ensures that compliance with employment legislation is maintained, fair competition is maintained in business and that employees receive their legal rights. The modern system of labour inspection is based on the International Labour Organisation's Conventions No's 81 and 129 (and their accompanying recommendations No's 81 and 133), which were adopted by ILO members (including Ireland) in 1947 and 1969 respectively. The Irish Labour Inspectorate, which was incorporated into NERA in 2007, was established and given powers under the Industrial Relations Act, 1946.

NERA Inspections are carried out in a fair and impartial manner and Inspectors' conduct is governed by the Civil Service Code of Standards and Behaviour requiring them to exercise due care and discharge their responsibilities in a fair and impartial manner with integrity and objectivity. NERA employees are also subject to NERA's Code of Practice which is available, along with the Employers Guide to NERA Inspections, on NERA's website. NERA Inspectors' powers are derived from a range of legislation dating back to the Industrial Relations Act, 1946.

NERA INSPECTORS HAVE AN ENFORCEMENT ROLE UNDER THE FOLLOWING LEGISLATION

- **Industrial Relations Acts, 1946 to 2004 (1) Employment Regulation Orders (Joint Labour Committee system) & (2) Registered Employment Agreement system**
- **The National Minimum Wage Act, 2000**
- **Protection of Young Persons (Employment) Act, 1996**
- **Organisation of Working Time Act, 1997**
- **Payment of Wages Act, 1991- statement of wages aspect only.**
- **Carer's Leave Act, 2001**
- **Employment Agency Act, 1971**
- **Protection of Employment Act, 1977**
- **Protection of Employees (Employers' Insolvency) Acts, 1984 to 2003**
- **Parental Leave Act, 1998 (Department of Justice, Equality and Law Reform).**
- **Employees (Provision of Information and Consultation) Act, 2006**
- **Employment Permits Acts, 2003 & 2006**

NERA Inspectors have the power to:

- **Enter at all reasonable times any premises where s/he has reasonable grounds for believing that any workers are employed**
- **Require the production of records to demonstrate compliance with employment legislation**
- **Inspect, examine and copy such records**
- **Interview any person**

Where employers cooperate with NERA inspections and have the required records to show the Inspector, the input from the employer in terms of time and resources required can be minimal. On the other hand, for employers who refuse to cooperate or rectify breaches, the process can be lengthy and involve considerable resources being allocated by both the employer and NERA. An inspection can take anything from one hour to a number of days and can require as little as 15 minutes of the employer's time or considerably longer.

The most common issues found during NERA Inspections include:

- **Failure to keep records**
- **Failure to keep records in the prescribed form**
- **Failure to keep records for three years**
- **Failure to pay the appropriate rates**
- **Failure to provide pay slips to employees**
- **Inadequate public holiday / annual leave provision**

For further information on NERA see:

www.employmentrights.ie

SUMMARY OF PROSECUTION ACTIVITY

In the period January to June 2010, 74 cases were referred to NERA solicitors for prosecution. On 30 June there were 44 cases awaiting decisions on referral for prosecution.

51 cases were concluded from 1st January to 30th June 2010, the majority of which 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. 71 cases were on hands at the end of June 2010. Eight cases were concluded in the six month period ending June 2010.

NERA ROADSHOWS

During 2010 NERA began a series of regional roadshows, aimed at providing information on employment rights legislation in regional centres and allowing employers and employees to meet NERA staff and discuss any particular issues they may have on a confidential, one to one basis.

To date in 2010 NERA has carried out roadshows in Ballina, Wexford and Ennis and a range of other locations will also be visited during 2010. A full schedule will be posted shortly on www.employmentrights.ie.

EROS AND REAS – WHAT ARE SECTORAL AGREEMENTS?

ERO (*Employment Regulation Order*)

The Industrial Relations Act of 1946 made provision for the establishment of statutory bodies called Joint Labour Committees (JLC), made up of representatives of both employers and employees in a particular industrial sector. These committees formulate agreements on pay and conditions in their sectors and the agreements are given legal effect through the Labour Court as *Employment Regulation Orders (EROs)*.

There are currently 18 EROs in force, including in the following sectors:

- Catering
- Contract Cleaning
- Hairdressing
- Hotels
- Retail Grocery and Allied Trades
- Security

REA (*Registered Employment Agreement*)

The 1946 Act also provided for the registration with the Labour Court of employment agreements made between employers and employees in any sector or enterprise. When registered, these agreements are legally binding to all employers in the particular sector, regardless of whether or not they were party to the agreements. REA's can apply to individual workplaces or industry sectors.

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If a question arises as to whether an ERO or a REA applies to a particular worker, Section 57 and Section 33 of the Industrial Relations Act, 1946, respectively, allow for an application to be made to the Labour Court to decide as to the applicability of the ERO or REA.

There are currently 68 REAs in force. Of the REAs relating to industry sectors the following have been updated recently:

- Construction
- Printing
- Electrical Contracting
- Drapery, Footwear and Allied Trades

For a full list of EROs and REAs in force go to:

www.labourcourt.ie

NERA Inspectors are appointed by the Minister for Enterprise, Trade and Innovation under the Industrial Relations Acts to carry out inspections and to ensure that the terms and conditions prescribed in the relevant EROs and REAs are enforced. The main issues encountered by NERA when carrying out inspections of these agreements are in relation to the payment of the appropriate sectoral pay rate (in some cases employers may be paying the National Minimum Wage and not be aware that a higher minimum rate may apply to his/her particular sector), overtime rates and Sunday premium; and trainee rates.

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