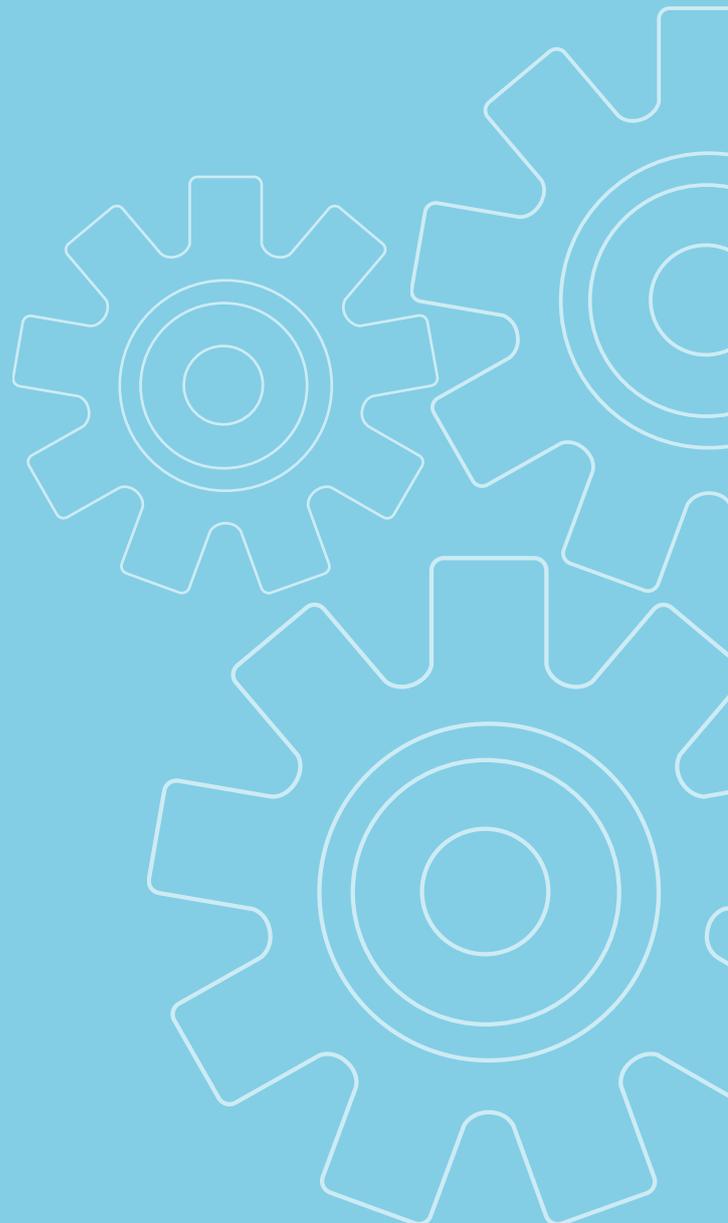




NERA
National Employment Rights Authority



REVIEW OF 2008

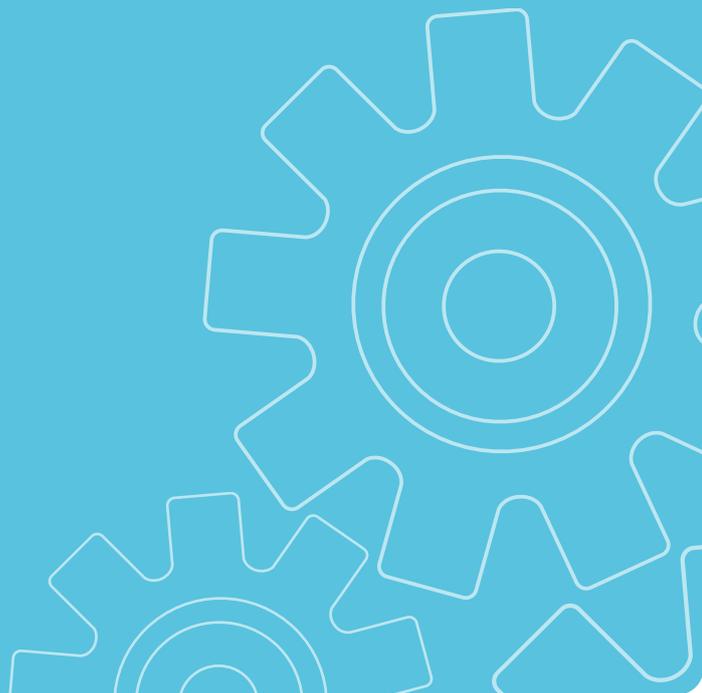


www.employmentrights.ie



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Minister's Foreword



The year 2008 was one in which we can look back at a significant record of achievement for the National Employment Rights Authority (NERA).

Before looking at the facts and figures, it is important to recall the backdrop against which NERA came about. The need to strengthen the resources to ensure that all workers were receiving their correct entitlements was of great importance in the aftermath of a number of high profile instances where serious breaches of employees' rights occurred. This core aim remains at the heart of NERA's mission.

NERA has very important functions and responsibilities in the areas of inspection and enforcement. NERA seeks to secure the statutory minimum entitlements of workers, which have evolved over the years through the established industrial relations machinery of the State. In many sectors these minimum terms and conditions are agreed between employer and employee representatives. Employment Law is not something designed to be onerous on employers, but a fundamental part of the business environment alongside considerations such as health and safety and tax compliance. With strong powers come responsibilities. NERA recognises this and has been working assiduously to ensure that workplace inspections are carried out to a high standard, with a strong emphasis on customer service and professionalism in its interactions with employers and employees alike. This work will continue in 2009 through continued stakeholder consultation, enhanced focus on quality customer service, further training of inspectors and harmonisation of work practices across Inspection Services.

A good example of NERA's commitment to customer service is its emphasis on information provision. This recognises that a true culture of compliance cannot be achieved through enforcement alone. In this respect, it is especially gratifying to see large numbers of website hits and calls to the information telephone line.

I was particularly pleased to appoint an Interim Advisory Board for NERA in 2008, under the chairmanship of Mr John Dennehy and with representation from key stakeholder groups, including trade unions and employer representatives. The Board will make an important and useful input to the development of NERA going forward. The next key milestone for NERA will be its establishment on a statutory footing. I expect this will be achieved in the coming months.

It only remains for me to wish NERA a successful 2009 and to thank the Authority for its valuable contribution to employment law compliance in 2008.

A handwritten signature in black ink that reads "Billy Kelleher". The signature is written in a cursive, flowing style.

Billy Kelleher T.D.

Minister for Labour Affairs

Director's Review of the Year



Welcome to NERA's annual update. The past year has been a busy one for NERA and one in which I am pleased to report significant progress in meeting our objectives.

During 2008 we progressed the recruitment and training of NERA staff and having successfully decentralised our Headquarters to Carlow in 2007, NERA now has regional offices in Dublin, Cork, Sligo and Shannon. 2008 also saw the Employment Law Compliance Bill published and the progress of this into law will establish NERA on a statutory basis, enhance our powers and increase the penalties for non-compliance with employment law.

Having identified a need for greater awareness of employment law, we launched our awareness campaign '*employment rights, you need to know*' in January. The cross-media advertising and public information campaign was designed primarily to raise the issue of employment rights with employers and employees and also to highlight the role of NERA in providing information.

The success of this campaign, supplemented by our presence around the country at a large number of events is evidenced by the large volume of enquiries dealt with by NERA Information Services. Compared to the previous year NERA received 20,000 extra calls to our telephone lines, twice the number of email enquiries and over 1.8 million hits on our new website, **www.employmentrights.ie**. The website was launched alongside the advertising campaign and has become a valuable resource for employers and employees alike in finding out their responsibilities and rights respectively.

A notable trend has been an increase in calls from employers. NERA views this as a positive trend, as employers are increasingly showing a desire to be compliant and seeking information from NERA on how to be so.

NERA Inspection Services has increased the number of inspections in 2008 with inspections taking place in all sectors right across the country. We have always said that compliant employers have nothing to fear from NERA, and those with proper records can expect an inspection to be carried out quickly and easily.

Most employers are committed to complying with employment law and cooperate with NERA by demonstrating compliance or rectifying any breaches detected. NERA has however encountered a number of employers where very serious breaches are evident or where employers refuse to cooperate.

Some of the more serious practices uncovered and problems encountered by NERA include:

- Not keeping any records in relation to an employee or employees or failing to produce any records for inspection
- Falsifying records including payslips and timesheets
- Requiring employees to work in excess of the legal limit
- Paying employees for significantly less hours than the hours actually worked
- Paying employees less than their legal entitlement
- Not providing employees with payslips
- Making unlawful deductions from employees' wages

The majority of these practices result in employees being exploited and taking home less pay than their statutory entitlement. Since we were established on an interim basis in 2007 we have recovered over €5M in wages due to employees. This money recovered by NERA represents real money in people's pockets and can make a huge difference to those earning a low wage. It simply is not acceptable under any circumstances for employers to take advantage of their employees in this manner by paying them less than their statutory minimum entitlement.

In addition to employees losing out, this type of activity also results in lost income to the State in terms of PAYE and PRSI.

Another aspect of such practices is a lack of fair competition between businesses, and the real prospect that some companies may unfairly win business in a tendering situation by reducing their wage bill illegally. Employers and potential investors must have confidence to know that the Irish labour market is properly regulated and that those who abide by the law will not be disadvantaged.

2009 presents a new set of challenges for NERA. We are ready, willing and able to meet these challenges as we move closer to our goal of a national culture of employment rights compliance, in an Ireland where all employers know and respect the law and all employees can be assured of receiving their rights.

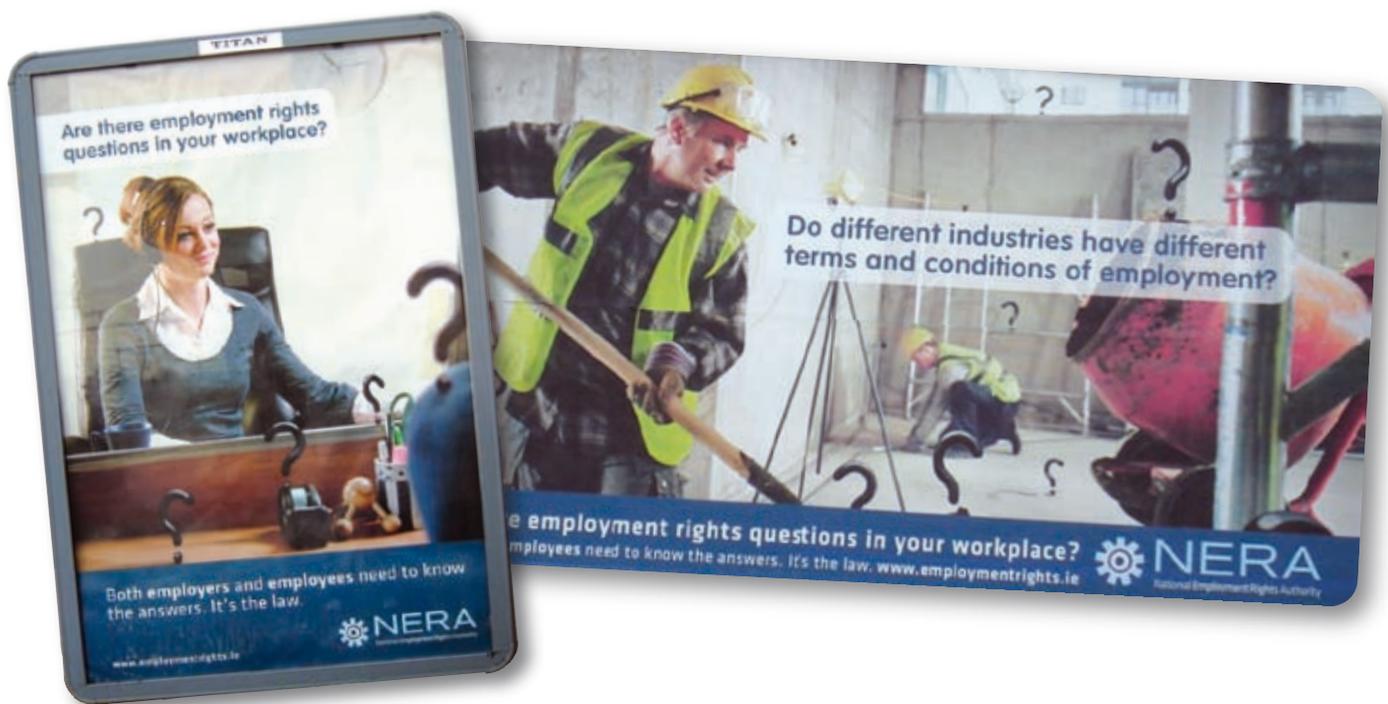


Ger Deering
Director, NERA

Public Awareness Campaign

NERA began 2008 by launching a major publicity campaign to inform employees of their rights and employers of their responsibilities. It was an extensive information campaign designed to reach 85% of the population with information being provided online, on radio and television as well as through billboard and the print media.

The campaign generated large numbers of enquiries to NERA's website and Information Services telephone line and marked a major step towards the fulfilment of the Authority's mission of creating a culture of employment rights compliance.



NERA Information Services

NERA Information Services answer enquiries from employers and employees about employment rights legislation by telephone, in writing and by e-mail. The unit is staffed by 14 information officers and operates five days a week from 9.30am to 5.00pm.

Information Services dealt with nearly 115,000 calls in 2008, an increase of over 30% on 2007. Staff also handled 11,300 email enquiries; nearly double the 2007 figure (5,700). The most commonly requested information related to Redundancy, Holidays and Public Holidays, and Payment of Wages.

NERA's website www.employmentrights.ie was launched in January 2008 and recorded in excess of 1.8 million web page impressions over the course of the year.

In 2008 NERA Information Services continued to provide a range of explanatory leaflets and guides on different entitlements under employment rights legislation, some of which were made available in eleven languages, as well as in English and Irish. Over 85,000 publications in total were distributed in 2008. A list of all publications available from NERA is included on page 12.

NERA's Quarterly Update, which features statistics from its Information, Inspection, Enforcement and Prosecution Services was published and distributed to NERA's stakeholders including the Social Partners and Oireachtas members and is now available (free) as an email subscription via NERA's website.

During 2008 NERA participated in an increased number of presentations and exhibitions. These events involved trade unions and employer groups as well as Citizen Information Centres and other key stakeholders.

NERA exhibited and presented at events such as the TEEU, MANDATE and IMPACT, SFA and ISME conferences, the Ploughing Championships and the FAS Opportunities 2008 exhibition. (Further details are available on page 11).



NERA Inspection Services

Resulting from the Government's commitment to substantially strengthen the enforcement of Employment Rights the number of NERA Inspectors increased from 50 at the end of 2007 to 80 in 2008.

Operating in a fair and impartial manner, NERA's Inspectors undertake a variety of inspections to check compliance with certain employment rights legislation. Inspections are carried out in response to complaints, as part of sectoral campaigns and on a routine basis. NERA received 1,516 complaints in 2008, an increase of almost 30% on 2007.

Where breaches of employment rights legislation are detected, Inspection Services seek the rectification of those breaches and the payment of any arrears due to employees arising from the breaches. Where necessary, NERA has recourse to legal proceedings to effect the rectification of breaches and the recovery of any arrears due.

In 2008, NERA's inspectors carried out a total of 27,900 calls, interviews and inspections. This is an increase of 96% on 2007. NERA Inspectors detected 4,629 breaches of employment law in 2008, compared to 2,344 in 2007. Arrears due totalling €3,112,064 were recovered.

As outlined in the tables below, the breach rate varies across the industry sectors and across general employment rights legislation which NERA has an inspection role.

Table 1

Summary of Inspections and Breaches Detected by Industry Sector – in 2008			
Sector	No of Inspections	Breaches Detected (%)	Arrears Recovered (€)
Agriculture	106	37	45,819
Catering	1,059	73	682,239
Retail Grocery & Allied Trade	182	64	136,046
Hotels	142	78	329,684
Contract Cleaning	73	85	284,068
Security	150	53	340,610
Construction	297	62	710,475
Electrical REA	34	47	133,351
Other	51	33	8,296
Calls	1,928	-	-
Interviews	3,516	-	-

Table 2

Summary of Inspections and Breaches by Employment Legislation – in 2008			
Legislation	No of Inspections	Breaches Detected (%)	Arrears Recovered (€)
National Minimum Wage	3,079	9	387,058
Payment of Wages	4,581	15	-
Organisation of Working Time	4,620	45	54,418
Protection of Young Persons	8,075	3	-
Other	7	57	-

Joint Investigations

The Social Welfare and Pensions Act 2007, provides for the sharing of relevant employment data between the Office of the Revenue Commissioners, the Minister for Social and Family Affairs and the Minister for Enterprise, Trade and Employment. This legislation has enabled NERA Inspection Services to join with inspectors from the Department of Social and Family Affairs and the Revenue Commissioners to form Joint Investigation Units and exchange information. This has proved very beneficial to NERA's employment rights inspections particularly with regard to sharing of information and has greatly assisted NERA in a number of key inspections in 2008.

Campaigns

Part of the Authority's strategy is to focus activities on specific industry sectors and specific legislation, in addition to ongoing routine inspections. In the course of 2008, NERA inspectors carried out inspection campaigns focusing on the security sector, catering sector, compliance with the National Minimum Wage and compliance with the Protection of Young Persons (Employment) Act.

Security

The security sector is one which has relatively recently undergone regulation with the establishment of the Private Security Authority (PSA). NERA undertook an initiative with the PSA in 2007 to inform employers and employees in the industry of employment legislation applicable to the industry, in particular the Employment Regulation Order relating to security workers. This information campaign was followed by an inspection campaign which commenced in February 2008. The statutory minimum rates of remuneration and conditions of employment of workers in the security industry are set out in the Security Industry Joint Labour Committee Employment Regulation Order¹. The minimum rate of pay per hour at the time of the campaign ranged from €9.27 to €10.15 per hour, depending on an employee's length of service. The rate since January 2009 ranges from €10.01 to €10.75.

The campaign saw 150 calls, interviews and inspections carried out. A 53% incidence of non-compliance was identified. A total of €340,610 owed to employees was recovered. In the course of the security campaign, the main type of breaches detected concerned the failure to pay appropriate overtime rates and failure to pay appropriate rates for public holidays. There was also non-compliance in relation to public holiday entitlements, payment of unsocial hours rates, Sunday premium and the statutory minimum hourly rate. There were also a significant number of breaches in relation to employers failing to keep appropriate records

For example in the case of one security company inspected during 2008, breaches were detected in relation to retention of records and payment of public holiday entitlements. The employer was informed of the findings of the inspection and arrears in excess of €34,000 were paid to 37 staff including €10,000 paid to 13 former staff members.

¹Available at www.labourcourt.ie

Catering

Catering is a large industry in Ireland and one which tends to peak in activity during the holiday season. It is also a sector that tends to attract young people to work within it, particularly during their summer break from education. There was quite a high rate of breaches detected by NERA in this sector in 2007. For this reason an inspection campaign was carried out in the sector during the summer of 2008.

The statutory minimum rates of remuneration and conditions of employment for workers in the catering sector are set out in two Employment Regulation Orders², one covering the Dublin area and one covering the rest of the country. In the case of Dublin, the rate of pay, since the 1st November 2008, for a 39 hour week, ranged from €271.28 to €370.70, depending on job classification and experience. The rates outside Dublin, since 1st December, range from €254.30 to €386.96 for a 39 hour week, again depending on job classification and experience.

The campaign saw 1,059 calls, interviews and inspections carried out. A 73% incidence of non-compliance was identified. A total of €682,238 owed to employees in this sector has been recovered to date. The main types of breach detected were the failure to pay either, or both, the Statutory Minimum Hourly Rate and the appropriate Sunday Premium. Breaches were also detected in respect of the failure to pay the appropriate rates for overtime, public holidays, and annual leave.

In the case of one restaurant inspected by NERA, 45 employees and ex-employees collectively received a total of over €14,000 in arrears between them in respect of wages owed after it was discovered that the statutory minimum rate of pay and overtime/Sunday rates were not being paid. In another case, similar breaches were found in a café with 10 employees. This resulted in staff being paid arrears between them totaling in excess of €8,600

National Minimum Wage

The National Minimum Wage is currently €8.65 per hour for an experienced adult worker. Ensuring employees are receiving the pay to which they are entitled is a key focus for NERA Inspection Services and a campaign in this respect is a regular feature of NERA's inspection activity.

The spring campaign in 2008 saw 3,079 calls, interviews and inspections, identifying a 9% incidence of non-compliance. A total of €387,058 owed to employees who were paid below the National Minimum Wage has been recovered. The failure to pay the minimum statutory rate was a significant issue in the course of the National Minimum Wage Campaign. In addition the failure to keep records was also found to be a significant issue.

During the course of an inspection, a motor dealership was found to be in breach of a number of areas of Employment Rights legislation. An inspection identified five employees who were not being paid the National Minimum Wage. The employer was also found to be in breach of the Organisation of Working Time Act as no records of hours worked were retained. The employer rectified the underpayment and the five employees who were not being paid the minimum wage received over €4,500 between them in arrears payments.

² Available at www.labourcourt.ie

NERA Enforcement and Prosecution Services

Summary of Prosecution Activity

Where breaches of employment law are suspected, NERA's priority remains the rectifying of these breaches and the recovery of arrears due to employees. In the majority of cases, this aim is met without recourse to legal proceedings. However, NERA may initiate prosecutions in respect of breaches of certain employment legislation.

In 2008 NERA referred a total of 70 cases to the Chief State Solicitor's Office (CSSO) for prosecution. 44 of these cases arose from NERA Inspections and 26 from the activity of the Construction Industry Monitoring Agency (CIMA). Of the 98 cases referred in 2007, 28 resulted from NERA inspections and 70 from CIMA. A total of 88 cases were concluded in 2008, including some which had been referred to the CSSO in 2007. This compares to 61 cases in 2007. A large number of these cases resulted in successful convictions and the imposition of a fine.

Summary of Enforcement Activity

NERA also brings proceedings for the purposes of enforcing certain awards of both the Labour Court and the Employment Appeals Tribunal. In this respect, a total of 46 cases were concluded in 2008, involving arrears totaling €74,970. This compares to 52 in 2007.

Organisations which NERA has worked in co-operation with in 2008

- Business in the Community
- Cavan Citizens Information Centre
- Chartered Institute of Accountants in Ireland
- Citizens Information Board
- Club Managers Association of Europe (Ireland)
- Cork Citizens Information Centre
- Department of Social & Family Affairs
- Dept Community Rural & Gaeltacht Affairs
- Dolcain Project
- Dundalk Enterprise Partnership
- Failte Ireland Learning Network
- FAS Opportunities
- Fingal Citizens Information Centre
- Free Legal Aid Centres
- Forum on Public Procurement
- Hospitality Ireland
- Irish Business and Employers Confederation
- Irish Congress of Trade Unions
- IMPACT
- Innovation in Business Centre
- Institute of Legal Accountants in Ireland
- Institute of Leisure and Amenity Management
- Irish Payroll Association
- Irish Pharmaceutical Ireland - HR Working Group
- Irish Vocational Educational Association
- Industrial Relations News
- Irish Small and Medium Enterprises Association
- Kildare County Council
- Laois Expo
- Law Society of Ireland
- Longford VEC
- MANDATE
- Mayo Immigrant Liaison Forum
- NASC, Irish Immigrant Support Centre
- National Ploughing Association
- National Safety Representative Conference
- Revenue Commissioners
- Roslyn Park College
- SIPTU
- Small Firms Association
- South East Enterprise Week
- Technical Engineering Electronic Union
- Thurles Citizens Information Centre
- Training for Excellence
- UCD
- Waterford Citizens Information Centre
- Carlow IT (Wexford Campus)
- Wexford County Childcare Committee

Employment Rights related publications available from NERA

GUIDES & LEAFLETS

- Information on Holidays and Public Holidays Organisation of Working Time Act, 1997 : Explanatory Booklet
- Organisation of Working Time Act, 1997. Sunday Premium Provision of Information Zero Hours: Explanatory leaflet for Employers and Employees
- Payment of Wages Act: Explanatory Booklet for Employers and Employees
- Detailed Guide to the National Minimum Wage Act, 2000
- Terms of Employment (Information) Act, 1994 and 2001: Explanatory Booklet for Employers and Employees
- A Guide to the Industrial Relations Act, 1990
- A Guide to the Employees (Provision of Information and Consultation) Act 2006
- Unfair Dismissals Acts, 1997 to 2007: Explanatory Booklet for Employers and Employees
- Protection of Employees (Fixed-Term Work) Act, 2003: Explanatory Booklet for Employers and Employees
- Protection of Employees (Part-Time Work) Act, 2001: Explanatory Booklet for Employers and Employees
- Protection of Young Persons (Employment) Act, 1996: Guide for Employers and Employees
- Guide to Redundancy Payments Scheme
- Carer's Leave Act, 2001: Explanatory Booklet for Employers and Employees
- European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003: Explanatory Booklet for Employers and Employees
- Guide to the Insolvency Payments Scheme: Explanatory Booklet
- Guidelines for Employees, Employers and Practitioners appearing before the Employment Appeals Tribunal
- Protection of Employment Act, 1977
- Guide to Inspections
- Guide to Labour Law
- Equal Rights and Opportunities for Men and Women in the European Union
- The Organisation of Working Time Act, 1997: Explanatory Leaflet for Employers and Employees
- Protection of Young Persons (Employment) Act, 1996. Summary of main rules on employing people under 18.

- Minimum Notice and Terms of Employment Acts, 1973 to 2001: Explanatory Leaflet for Employers and Employees
- Rights at a Glance Leaflet Available in Arabic; Chinese; Czech; English; French; Irish; Latvian; Lithuanian; Polish; Portuguese; Russian; Spanish
- Guide to Employment Rights Available in Arabic; Chinese; Czech; English; French; Irish; Latvian; Lithuanian; Polish; Portuguese; Russian; Spanish
- Employment Law Explained

CODES OF PRACTICE

- Code of Practice for Determining Employment or Self-Employment Status of Individuals
- Organisation of Working Time Act, 1997. Code of Practice on Compensatory Rest Periods: Explanatory Booklet
- Organisation of Working Time Act, 1997. Code of Practice on Sunday Working in the Retail Trade
- Code of Practice for Protecting Persons Employed in Other People's Homes: Explanatory Booklet
- Code of Practice for Addressing Bullying in the Workplace
- Code of Practice Concerning the Employment of Young Persons in Licensed Premises
- Code of Practice Dispute Procedures including in Essential Services

POSTERS

- Employment Rights at a Glance
- Under 18 Protection of Young Persons Act

FORMS

- T1A Form - Notice to Claim to the Employment Appeals Tribunal
- RP50 Form - Redundancy Payments Acts 1967 - 2007
- RP77 Form - Explanatory Note for Employee when applying to an Employer for a Lump Sum
- RP9 Form - Lay off and Short Time Procedures
- RP6 Form - Leaving before Redundancy Notice Expires
- Labour Inspectorate Section - Complaint Form
- OWT1 Form

The full range of forms for making a complaint to the Employment Appeals Tribunal and the Rights Commissioners are available from NERA.



Contact Details

National Employment Rights Authority,
O'Brien Road, Carlow.
Telephone: (059) 917 8800,
Fax: (059) 917 8912
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 8990
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.

