



# NERA

National Employment Rights Authority

# REVIEW OF 2011

[www.employmentrights.ie](http://www.employmentrights.ie)



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# Review of 2011

2011 was a very challenging year for NERA. In addition to carrying out information, inspection and enforcement roles, a number of major challenges emerged over the year which directly affected both NERA policy and structure and which will continue to influence the overall employment rights landscape in 2012 and beyond. Nevertheless NERA continued to provide support to both employers and employees through the provision of information regarding employment rights and legislative obligations, carried out a programme of workplace inspections and where necessary carried out prosecution and enforcement activity, which ensured a continued focus on compliance with employment legislation in 2011.

## Employment Regulation Orders

The judgement of Mr Justice Feeney on the 7th of July 2011 declared that the provisions of sections 42, 43, 45 of the Industrial Relations Act, 1946 and section 48 of the Industrial Relations Act, 1990 were invalid having regard to the provisions of Article 15.2.1 of the Constitution of Ireland.

In practical terms, this means that employees in those sectors formerly covered by EROs (such as Hotels, Restaurants, Contract Cleaning, Retail Grocery, Security, etc.) must now rely on their contracts of employment and the provisions of primary legislation for their terms and conditions of employment. As a consequence, NERA now mainly carries out inspections for compliance under the following legislation

- \* National Minimum Wage Act
- \* Payment of Wages Act
- \* Organisation of Working Time Act
- \* Protection of Young Persons Act
- \* Employment Permits Acts
- \* Industrial Relations Acts in respect of REAs (Registered Employment Agreements)

(a full list of legislation under which NERA inspectors have powers is available at [www.employmentrights.ie/en/aboutnera/inspectionsservices](http://www.employmentrights.ie/en/aboutnera/inspectionsservices)).

On 23rd December 2011, the Minister for Jobs, Enterprise and Innovation, Richard Bruton T.D., published the Industrial Relations (Amendment) (No. 3) Bill 2011. The Bill is intended to address the issues identified in the Feeney Judgement and implement reforms to both the ERO and REA wage setting mechanisms.

## Employment Rights Bodies Reform

In July, Mr Richard Bruton TD, Minister for Jobs, Enterprise and Innovation announced his intention to undertake a programme of reform of the State's employment rights and industrial relations procedures and institutions. This reform programme will result in the functions of NERA, the Labour Relations Commission (including the Rights Commissioner Service), the Equality Tribunal and certain (first instance) functions of the Employment Appeals Tribunal (EAT) being drawn together to form a single body to deal with all complaints of first instance relating to employment. Separately, the functions of the Labour Court and the appeal functions of the EAT will be drawn together to form a single body responsible for hearing all appeals relating to decisions of the new first instance body.

This process resulted in changes to NERA personnel and management structures. With effect from 1st September 2011, Kieran Mulvey took over leadership of NERA working with Deputy Director Padraig Dooley in relation to day-to-day management and operations. Ger Deering, Director of NERA, was appointed as Director of the Employment Rights and Industrial Relations (ERIR) Reform Project Office with responsibility for coordinating the streamlining process across the employment rights bodies. Four staff were released from their general roles within NERA and seconded to a dedicated Project Office, established to support and drive the Reform Project.

At the outset Minister Bruton identified three priority projects for delivery by the end of 2011. These were the introduction of a single complaint form, a single point of contact and a new website. NERA played a key role in the successful delivery of these projects which were launched in early January 2012.

### Website

A new interim website ([www.workplacelrelations.ie](http://www.workplacelrelations.ie)) provides information on employment, equality and industrial relations legislation and associated public services.

### Single Complaint Form

A Single Complaint Form (replacing 30 existing complaint forms) is now in use for all first instance individual complaints and referrals to the Rights Commissioner Service, the Employment Appeals Tribunal, NERA, the Equality Tribunal and the Labour Court. The Form and its Guidance Notes are available on [www.workplacelrelations.ie](http://www.workplacelrelations.ie), on the websites of NERA, the other employment rights bodies and the Citizens Information Board. Complainants can complete the form on their PC, print and sign it for postal submission and save a copy for their own records.

### Single Point of Contact

A Single Point of Contact, called Workplace Relations Customer Services was developed and became operational at the beginning of 2012. This Unit, based in NERA and incorporating the existing NERA Information services, has the following functions:

- \* Provision of information in relation to employment, equality and industrial relations rights and obligations
- \* Processing the receipt and registration of all first instance complaints currently referred to the five workplace relations bodies
- \* Dealing with enquiries concerning the status of complaints and associated procedures and processes

Commenting on the successful implementation of Phase 1 of the reforms, Minister Bruton said,

*“ I am more determined than ever to proceed to a two tier structure i.e. a single Workplace Relations Commission of first instance and a separate appeals body. This will mean effecting changes to bring about the ultimate merger of the existing five institutions into two. In parallel with the ambitious administrative reforms which are being delivered, my Department is developing the legislative proposals necessary to establish the new structure on a statutory footing. ”*

In 2012 further major reform will be delivered. NERA will continue to play a central role in the successful delivery of the ERIR Reform Project.

# NERA ACTIVITIES DURING 2011

## Awareness & Information

In 2011, NERA continued to provide clear, concise and accurate information on employment rights and obligations to both employers and employees. Following a decision to transfer responsibility for Redundancy payments to the Department of Social Protection, NERA ceased to deal with calls in relation to applications for redundancy claims and rebates, however calls regarding the operation of the redundancy legislation continue to be dealt with.

The NERA call centre provided information to over 104,000 people during 2011. Of these calls the NERA 24 hour recorded information service dealt with almost 17,000 callers, while over 90,000 callers had their queries answered directly by experienced Information Officers. This was a decrease of over 14% on the 2010 figure of 121,435 and can partly be accounted for by the transfer of calls relating to redundancy claims to the Department of Social Protection. This reduction has enabled NERA to support the Workplace Relations Customer Services role under the Employment Rights Bodies reform programme.

Employees and former employees accounted for 69% of callers, while an estimated 23% were employers. Redundancy, working hours, terms of employment, payment of wages and unfair dismissal represented the highest categories of queries dealt with.

The NERA website ([www.employmentrights.ie](http://www.employmentrights.ie)) provided up to date employment rights information. In 2011, over 1.25 million web page impressions were recorded and almost 14,000 queries submitted by e-form were dealt with through the website. This is a very similar to the level of demand experienced in 2010.

A wide range of information booklets and leaflets are also available to download including 'Guide to Inspections' and 'Guide to Employment Rights', general booklets on employment law and publications dealing with individual pieces of legislation (e.g. Guides to National Minimum Wage Act, Organisation of Working Time Act, etc.), as well as information on starting a business, business continuity planning, LRC Codes of Practice and information regarding the employment of young persons.

In 2011, NERA also provided information by participating in 16 events organised by trade unions, employer bodies, public bodies, educational institutions and civic society groups throughout the country.

Staff in NERA have also provided administrative support to other employment rights bodies within the Department of Jobs, Enterprise and Innovation. In this regard 2,204 claims were processed and acknowledged for the EAT and 4,008 complaint forms entered on the Rights Commissioner's database.

## Workplace Inspections

NERA carries out workplace inspections to ensure compliance with employment rights legislation. Inspections also provide the opportunity to inform employers of the requirements of legislation, discuss best practice for compliance and deal with queries they may have. In general, inspections are carried out under the following legislation:

- \* National Minimum Wage Act 2000
- \* Payment of Wages Act 1991
- \* Organisation of Working Time Act 1997
- \* Protection of Young Persons (Employment) Act 1996
- \* Employment Permits Acts
- \* Industrial Relations Acts

In 2011, a total of 5,591 inspection cases were completed involving over 100,000 employees. This compares to 7,164 cases in 2010. The amount of unpaid wages recovered was €1,905,262 compared to €1,249,755 in 2010.

### Summary of Inspections and Breaches Detected by Industry Sector in 2011\*

Sector	No of Inspections Concluded	Compliance Rate%	Unpaid Wages Recovered (€)
AGRICULTURE	59	37%	89,420
CATERING	494	24%	315,807
RETAIL GROCERY	273	29%	392,088
HOTELS	217	26%	387,705
CONTRACT CLEANING	43	51%	30,890
SECURITY	51	47%	60,518
CONSTRUCTION	399	58%	269,910
ELECTRICAL	54	52%	21,596
OTHER	55	25%	69,095

\* It should be noted that the Feeney Judgement in July 2011 did not result in any significant change in compliance levels in sectors formerly covered by EROs during the second half of 2011 when these instruments were no longer in force.



## Summary of Inspections and Breaches by Employment Legislation in 2011

Sector	No of Inspections Concluded	Compliance Rate%	Unpaid Wages Recovered (€)
<b>NATIONAL MINIMUM WAGE#</b>	1,169	51%	268,234
<b>PROTECTION OF YOUNG PERSONS</b>	2,777	100%	0

# It should be noted that only 20% of breaches found under the National Minimum Wage Act related to pay, the remaining 80% were relating to record keeping and other breaches. A detailed analysis of the types of breaches in relation to all employment sectors may be found at <http://www.employmentrights.ie/en/aboutnera/publicationsdownloads/>.

## Employment Permits

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

An analysis of compliance with the Employment Permits Acts in relation to inspections carried out during the sample period between 1 October 2011 and 15 November 2011\* produced the following information.

<b>Employers</b>		
Total employers inspected:	441	
Total employers in breach of Employment Permit Acts:	88	(20%)

<b>Profile of persons employed in breach of Employment Permit Acts</b>		
No. of Romanians detected working without permit	77	(36%)
No. of Bulgarians detected working without permit	8	(4%)
No. of asylum seekers detected working illegally	19	(9%)
No. of students stamp 2 working in excess of permitted hours	31	(15%)
No. of other migrants working without permit	77	(36%)
<b>Total illegal workers detected</b>	<b>212</b>	<b>100%</b>

\* It should be noted that the period examined included a large number of night inspections, where the nature of businesses open (predominately in the services sector) would naturally have a higher proportion of migrant workers. Therefore it would be unreliable to draw overarching conclusions regarding the level of compliance with the EP Acts based on this limited sample which should be regarded as illustrative rather than definitive. In 2012, NERA will be able to provide whole year statistics which will provide a comprehensive picture of the overall compliance situation with regard to Employment Permits legislation.

## Prosecutions

It is NERA's policy to seek voluntary compliance where breaches of employment law are detected. NERA will work with employers and allow them every reasonable opportunity to rectify breaches in preference to prosecution. As a result of this approach the number of prosecutions instituted as a result of Inspections are very low. From the table below it can be seen that the vast majority of cases are resolved during the inspection process, with only a very small number (1%) prosecuted.

	Number of Employers Inspected	Prosecutions as a result of Inspections
2007	*	28
2008	*	44
2009	8,859	87 (0.98%)
2010	7,164	89 (1.24%)
2011	5,591	56 (1%)

\* comparable figures are not readily available.

NERA also carries out prosecutions for non-compliance with Labour Court orders under the Industrial Relations Acts. These arise where an order of the Labour Court is secured (usually in REA cases for non-payment of pay or pension contributions to an agreed scheme) and NERA is requested to initiate a prosecution for failure to comply with the order.

Prosecutions for non-Compliance with Labour Court Orders	
2007	70
2008	26
2009	21
2010	54
2011	93

*NERA also carries out prosecutions for non-compliance with Labour Court orders under the Industrial Relations Acts.*

## Civil Enforcement of Decisions of Employment Rights Bodies by NERA

Where an employee has received an award through a Rights Commissioner hearing or an EAT/ Labour Court hearing, and the employer has failed to pay the award, NERA, on behalf of the Minister, may bring proceedings through the Civil Courts for enforcement of the award.

	Value of awards referred to NERA for Civil Enforcement	Arrears Paid to employees as a result of Civil Enforcement by NERA
2007	€154,200	€29,735
2008	€285,937	€138,800
2009	€224,934	€50,618
2010	€274,253	€87,791
2011	€854,462	€88,361

A total of 88 civil enforcement cases were in hand at the end of December 2011.

## Protection of Young Persons Licences

NERA is responsible for issuing licences under Section 3 of the Protection of Young Persons (Employment) Act. These licences allow children (i.e. under 16s) to be employed in cultural, artistic, sports or advertising work which is not harmful to their safety, health, or development and does not interfere with their attendance at school. A total of 153 licences were issued in 2011 in respect of 358 children working in the arts/TV/film.

## Working with Other Agencies

NERA is empowered under legislation to exchange information with the Department of Social Protection and the Revenue Commissioners. This enables a more comprehensive government approach to employers and employees who may be at risk of being non-compliant and facilitates the operation of joint investigations by the three parties, or a combination of the parties, where breaches of law are suspected. NERA inspectors may also be accompanied by Gardaí during inspections and NERA works closely with Gardaí in particular on matters relating to employment permits.

During 2011, a total of 118 joint investigations took place with Revenue and / or the Department of Social Protection. Information exchanged helped to uncover non-compliance with employment law, secure payment of wages for employees and save the exchequer money.

## Annual Budget and Staff

At the end of 2011 NERA had 102 staff by comparison with 108 in 2010 and 119 in 2009. Included in this total are 62 inspectors and 27 Information officers.

NERA has continued to reduce the cost of the provision of its services over the past number of years. In 2011, NERA's running cost was €6.6 million, a reduction in €300,000 from the 2010 cost of €6.9 million. NERA's budget was €7.9 million in 2009 and €9.6 million in 2008.

NERA staff are employees of the Department of Jobs, Enterprise and Innovation and all finances are administered through the Department's budget and form part of the Department's accounts.

# Advisory Board

In 2008, the Minister for Labour Affairs established the NERA Advisory Board on an interim basis. NERA continued to work in close cooperation with the Board during 2011.

The main functions of the Board are of a general advisory nature and include advising NERA on:

- \* issues relating to compliance with, and enforcement of, employment legislation including the provision of information
- \* aspects of NERA's work programme and strategy statement
- \* delivery of a high standard of customer service; and
- \* proposals for research, surveys and studies

## **The members of the Board are as follows:-**

Chairperson:

Mr. John Dennehy, former public representative

Minister's Nominees:

Mr. John Walsh, former Asst. Secretary, Dept of Jobs, Enterprise and Innovation

Mr. Jimmy Somers, former trade union official

Persons nominated by organisations representative of employees:

Ms. Patricia King, SIPTU

Ms. Linda Tanham, Mandate (resigned during 2011 on appointment to Labour Court)

Mr. Owen Wills, TEEU

Persons nominated by organisations representative of employers:

Mr. John Flanagan, IBEC

Mr. Eddie Keenan, CIF

# EMPLOYMENT RIGHTS ISSUES

## Employment Permits

The principal purpose of the Employment Permits Acts, 2003 and 2006 is to provide for the regulation of employment of certain foreign nationals in the State and to prohibit the employment of non-EEA nationals without an employment permit issued by the Department of Jobs, Enterprise and Innovation.

Bulgarian and Romanian nationals are also required to have employment permit to take up employment in Ireland. However in the case of Bulgarians and Romanians this restriction only applies for their first continuous twelve months of employment in the State.

### Did you know?

- \* Having a PPS number doesn't automatically mean a foreign national can work in Ireland
- \* Working without a valid employment permit is a criminal offence for both the employer and employee
- \* Romanian and Bulgarian nationals generally require employment permits for their first 12 months of work in Ireland
- \* Employment permits are only granted for certain categories of worker
- \* People working illegally are more vulnerable to exploitation and abuse
- \* People applying for asylum seeker status cannot legally work while their application is under consideration
- \* Persons are not legally permitted to work while waiting for a work permit application to be processed

With the exception of persons who can legally work in Ireland (see below), working without a valid employment permit, or employing someone without a valid employment permit, is a criminal offence under the Employment Permits Acts. NERA Inspectors carry out checks to ensure compliance with the Employment Permits Acts as part of their workplace inspections. These can be either in the form of a standard NERA Inspection (i.e. by appointment and include all employment legislation) or Night inspections (specifically focussing on the Protection of Young Persons and Employment Permits Acts).

### The following persons can legally work in Ireland

- \* EEA nationals (with the exception of persons from Romania and Bulgaria)
- \* Swiss nationals
- \* Romanian and Bulgarian nationals who have been resident and employed in the State as the holder of an employment permit for an uninterrupted period of 12 months or longer or who are the spouse/ dependant of a Romanian or Bulgarian worker that has completed 12 months compliant employment in the labour market
- \* Persons granted Refugee status
- \* Persons granted temporary leave to remain on humanitarian grounds
- \* Persons with specific immigration permission permitting them to work
- \* Persons with Working Visa/Work Authorisation
- \* Spouses, civil partners or dependents of an Irish or EEA national (except Bulgarian and Romanian nationals) with permission to remain
- \* Persons granted leave to remain as a parent of an Irish citizen



## NERA Contact Details

### Information Services

Lo-call 1890 80 80 90

### Inspection Services

Lo-call 1890 220 100

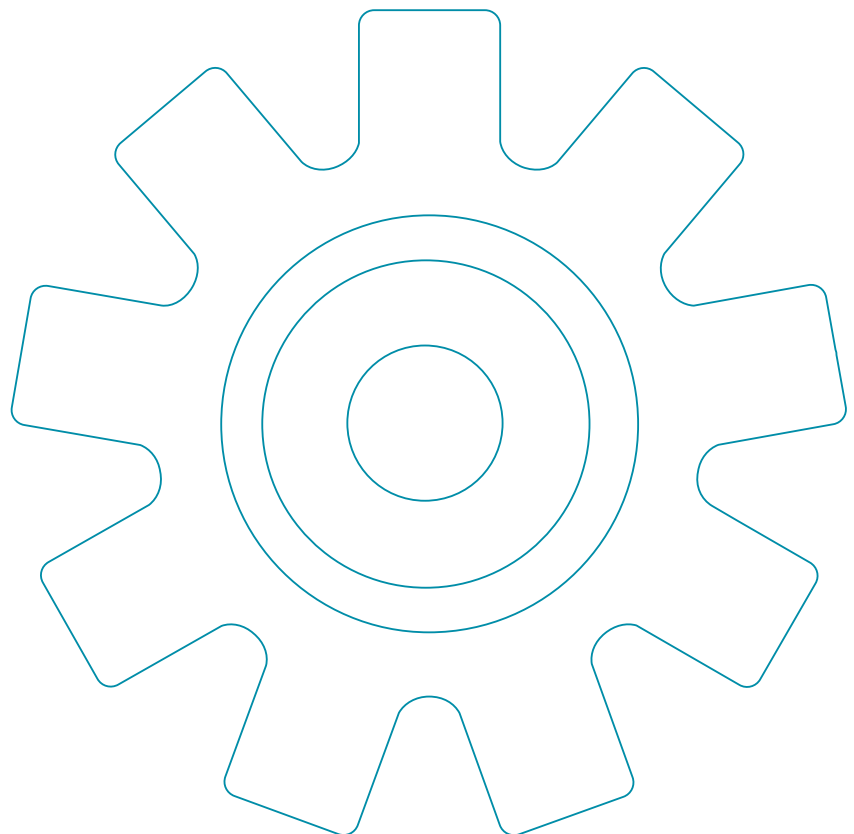
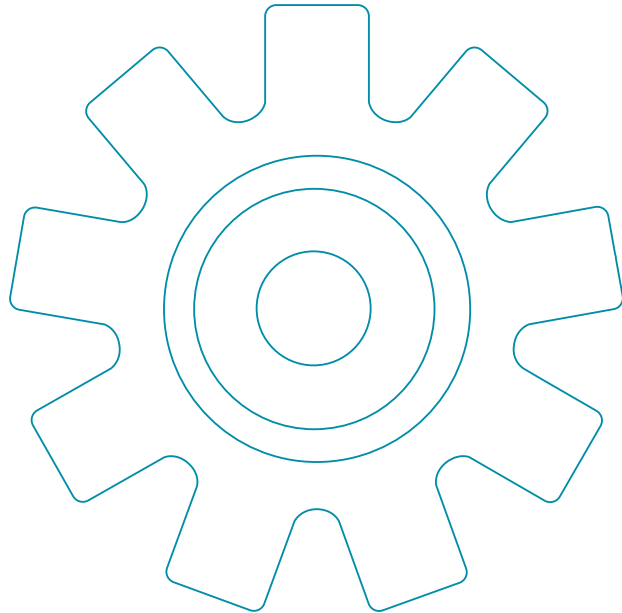
### Prosecution & Enforcement Services

Lo-call 1890 220 200

**[www.employmentrights.ie](http://www.employmentrights.ie)**

or

**[www.workplacerelations.ie](http://www.workplacerelations.ie)**



An Roinn Post, Fiontar agus Nuálaíochta  
Department of Jobs, Enterprise and Innovation

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