



Legislation Handbook For Early Childhood Settings



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Barnardos supports children whose well-being is under threat, by working with them, their families and communities and by campaigning for the rights of children. Barnardos was established in Ireland in 1962 and is Ireland's leading independent children's charity.

National Childhood Network aims to support the development of a coordinated approach to the delivery of high quality in early childhood and school age childcare services nationally.

Contents

INTRODUCTION	4
SECTION ONE: CHILDREN	6
SECTION TWO: EMPLOYERS & EMPLOYEES	18
SECTION THREE: HEALTH & SAFETY	38
SECTION FOUR: BUILDINGS & ENVIRONMENT	48
SECTION FIVE: FINANCE	54
SECTION SIX: MANAGEMENT & GOVERNANCE	60

Introduction

This handbook is an update on the 2008 publication *Legislation Handbook for Childcare Providers*. It is intended to act as a guide to the many areas of legislation that impact upon early childhood education and care providers in Ireland, such as full daycare and sessional pre-school services and drop-in centres. Much of the legislation included in this handbook will also be applicable to registered childminders and school age services.

Comprehensive knowledge of relevant, up-to-date legislation and regulations is crucial for ethical, safe, productive and effective work practices in early childhood settings. Regardless of the size of a setting, legislation and regulation play a key role in shaping its overall management, as well as determining how the daily activities within that setting are administered. Legislative and regulatory systems have a dual function: they ensure that services meet minimal outlined standards, and they encourage improvement in the quality of provision beyond minimal standards to promote children's development and learning (O'Kane & Kernan, 2002¹).

Compliance with legislation involves an awareness of, familiarity with and proactive approach to various areas of relevant regulations and legislation. It will also involve a regular review of policies and procedures and staff training where appropriate.

This handbook is divided into sections, each looking at an area of relevant legislation, with a quick reference guide at the start of the section listing the key areas. The section then outlines the main items of legislation along with a short description of the purpose, an indication of who the legislation applies to and a listing of useful contacts or sources of further information.

1 O'Kane, M. and Kernan, M. (2002). The Impact of the Child Care (Preschool Services) Regulations (1996) on the Quality of Early Childhood Services in Ireland: The IEA Pre-Primary Project Revisited (in) Horgan, M. and Douglas, F. (Eds.) (2002). *Lessons for the 21st Century – Research, Reflection, Renewal: Proceedings of the OMEP (Ireland) Conference 2002*. Cork: OMEP (Ireland), pp. 344-357.

Management Overview

The role of management in early childhood education and care is a crucial one, encompassing responsibility for children, staff, parents and anyone else who may be upon the premises, whether in a professional capacity or a visiting one. The service may be independently operated, or a committee might manage the service, as in community pre-schools.

Management responsibilities fall under the following broad areas:

- Ensuring compliance with all relevant legislation.
- Ensuring that there is a clear management structure in place.
- Establishing and maintaining financial systems and administrative procedures.
- Acting as an employer and fulfilling all legal responsibilities as an employer.
- Devising and implementing policies and procedures.
- Monitoring and evaluating the service on an ongoing basis.
- Ensuring all relevant staff are aware of and carry out their duties in compliance with legislation.

Managers need to thoroughly familiarise both themselves and relevant staff with all of these areas and to seek advice and assistance where necessary.

There have been a number of changes in various areas of legislation and regulation in recent years that will impact upon providers that should be noted. There have been updates to employment legislation, health and safety and data protection for example. The Child Care 1991 (Early Years Services) Regulations 2016 also outline detailed legal requirements that must be adhered to.

Management has a responsibility to ensure that practices are as up-to-date as possible and allow for any changes that are introduced, such as judgments and directives from the EU that affect legislation. Policies and procedures should acknowledge and incorporate any legislation that is appropriate, knitting it into the fabric of the operations of the setting.



Legislation covered in this book is available from <http://www.irishstatutebook.ie>

SECTION ONE CHILDREN

This section includes the Child Care Act and
Early Years Regulations; Child Protection;
UN Convention on the Rights of the Child

Child Care Act and Early Years Regulations

Child Care Act 1991 (Part VII)

Child and Family Agency Act 2013

Child Care Act 1991 (Early Years Services) Regulations 2016

Child Care Act 1991 (Early Years Services) (Amendment) Regulations 2016

National Vetting Bureau (Children and Vulnerable Persons) Acts 2012–2016

In brief

Under common law in Ireland, those having care of a child act *in loco parentis*. If the care of the child is regular or is of a long duration, then the carer may have additional duties, such as in medical emergencies. The **Child Care Act 1991** is the main piece of legislation governing the care and protection of children in Ireland and it places a statutory duty on Tusla, the Child & Family Agency as the dedicated State agency responsible for improving wellbeing and outcomes for children.

The law in Ireland provides for the regulation and inspection of early years services. Under the Child Care Act 1991, as amended by the **Child and Family Agency Act 2013** Part VIIA, Tusla, the Child and Family Agency is charged with ensuring the health, safety and welfare of pre-school children attending services. Pre-school children are defined by law as ‘children under 6 years of age, who are not attending a national school or equivalent’. Pre-school services include pre-schools, play groups, day nurseries, crèches, childminders and other similar services looking after more than three pre-school children.

The Childcare Act 1991 (Early Years Services) Regulations 2016 focus on a number of areas including registration, management and staff, information and records, safety, premises and inspection, as well as the health, welfare and development of children. New areas introduced into the Early Years Regulations 2016 (which are a revision of Regulations produced in 2006) include:

- Minimum qualification requirements for staff
- Supervision and training of staff
- Policy development and implementation
- Annual review of service provision
- A requirement for existing services to re-register within a three-year timeframe
- A national register of services

Tusla Early Years Inspectorate has developed a Quality and Regulatory Framework (QRF) to support registered early years services to comply with the Regulations. The QRF is child-centred, with a specific focus on the quality and safety of the care provided directly to children using the services. The document has been developed to set out in a clear way the requirements for statutory compliance with regulations for registered services, the stakeholders and parents or guardians. It also informs the way in which inspections will be carried out.

Summary of Early Years Regulations

Registration

Under the Regulations, providers are obliged to register their service. Regulation 6 of the Childcare Act 1991 (Early Years Services) Regulations 2016 states:

(3) a person who proposes to provide a pre-school service other than a temporary pre-school service shall make an application under section 58D (2) in respect of the pre-school service at least 3 months before the person proposes to commence the service.

(4) a person who proposes to provide a temporary pre-school service shall make an application under section 58D(2) in respect of the pre-school service at least 21 days before the person proposes to commence the service.

Vetting of staff

Providers must ensure appropriate vetting of all staff, students and volunteers in the setting. Part III of the Childcare Act 1991 (Early Years Services) Regulations 2016 states:

(2) A registered provider shall ensure that each employee, unpaid worker and contractor is suitable and competent taking into consideration the nature of the needs of children, including by –

(a) consideration of references from the person’s past employers, if any, and in particular the most recent employer, if any,

(b) consideration of references from reputable sources in the case of a person who has no past employers,

(c) consideration of the vetting disclosure received from the National Vetting Bureau of the Garda Síochána in accordance with **National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016** in respect of the person, and

(d) ensuring, insofar as is practicable, that where a person has lived in a state other than the State for a period of longer than 6 consecutive months, he or she provides police vetting from the police authorities in that state.

(3) The procedures specified in paragraph (2) shall be carried out prior to any person being appointed, assigned or allowed access to or contact with a child attending the pre-school service.

(4) A registered provider shall ensure that, without prejudice to the generality of paragraph (2) and subject to paragraphs (5) and (6), each employee working directly with children attending the service holds at least a major award in Early Childhood Care and Education at Level 5 on the National Qualifications Framework or a qualification deemed by the Minister to be equivalent.

The National Vetting Bureau of the Garda Síochána (formerly the Garda Central Vetting Unit) deals with requests to provide information on certain prospective employees or other workers. The Bureau carries out vetting for relevant organisation that are registered with it. At the request of the Department of Children and Youth Affairs (DCYA), Barnardos is assisting in the processing of Garda Vetting applications for a number of groups/organisations who are not directly registered with the National Vetting Bureau.



Note: See www.barnardos.ie/our-services/garda-vetting for more information.

Health, welfare and development of the child

Regulation 19 of the Childcare Act 1991 (Early Years Services) Regulations 2016 states that:

A registered provider shall, in providing a pre-school service, ensure that –

- (a) each child’s learning, development and well-being is facilitated within the daily life of the pre-school service through the provision of the appropriate activities, interaction, materials and equipment, having regard to the age and stage of development of the child and
- (b) appropriate and suitable care practices are in place in the pre-school service, having regard to the number of children attending the service and the nature of their needs.

Staffing levels

Under Regulation 11, services must ensure that there is a sufficient number of suitable employees with necessary experience and competencies (qualifications, knowledge skills and abilities) to:

- Meet the needs of all children at all times
- Ensure adequate supervision while children are sleeping or resting, during staff breaks and outings
- Reflect the size, layout and purpose of the service

The table below shows the required adult: child ratios.

Type of Service	Age of Children	Adult/Child Ratio
Full day care or part time day care	0–1 year	1:3
	1–2 years	1:5
	2–3 years	1:6
	3–6 years	1:8
Sessional	0–1 years	1:3
	1–2½ years	1:5
	2½–6 years	1:11
Drop-in and temporary pre-school	0–6 years	1:4
Overnight	0–1 year	1:3
	1–6 years	1:5

Safeguarding Health, Safety and Welfare of Child

Under Regulation 23, the protection and welfare of the children in the service is paramount, and the children's safety and wellbeing is the priority. Registered providers must be committed to safeguarding the children in their care, and to providing a safe environment where children can play, learn and develop. The scope of this regulation addresses the following:

- General Safety
- Safe Sleep
- Administration of Medication
- Management of Outings (where undertaken)
- Infection Control
- Risk Management
- Accident and Incident Prevention
- Fire Safety

Premises

Under Regulation 29, a registered provider should ensure that the premises of the service are:

- Of sound and stable structure
- Safe and secure
- Kept adequately lit, heated and ventilated
- Cleaned, maintained and repaired, as required
- Equipped with adequate and suitable sanitary facilities

Inspection

The Department of Children and Youth Affairs (DCYA) has responsibility for the Early Years Regulations 2016 and for developing policy in this area. Tusla, the Child and Family Agency has the responsibility of inspecting settings to ensure that they are compliant with the Regulations and publishing their inspection reports on the Tusla website.

Applies to

All services for children under the age of six who are not attending primary school, including pre-schools; play groups; day nurseries; crèches and day care services; childminders caring for more than three children (other than their own); and drop-in services.

Further information

- Tusla. (2018). *Quality and Regulatory Framework*. Dublin: Early Years Inspectorate, Tusla.
<https://www.tusla.ie/services/preschool-services/early-years-quality-and-regulatory-framework/>
- Local City and County Childcare Committees

Child Protection

Child Care Act 1991

Children First Act 2015

In brief

The main piece of legislation relating to child protection in Ireland is the **Child Care Act 1991**, which deals with the care of children who have been assaulted, ill-treated, neglected or sexually abused, or who are at risk of abuse.

The **Children First Act 2015** places a number of statutory obligations on specific groups of professionals and on particular organisations providing services to children. This Act provides for a number of key child protection measures and requirements as follows:

- Mandatory reporting to Tusla of child protection and welfare concerns by key professionals (mandated persons). Mandated persons include professionals working with children in the education, health, justice, youth and childcare sectors and include ‘child care staff member employed in a pre-school service within the meaning of Part VIIA of the Child Care Act 1991’.
- Mandated persons to assist, if requested by Tusla, in the assessment of a child protection risk arising from a mandated report.
- Relevant organisations who provide services to children and young people to carry out a risk assessment, and to develop a Child Safeguarding Statement that outlines the policies and procedures that are in place to manage risks that have been identified.
- A register of non-compliance for services who fail to provide a Child Safeguarding Statement.
- The statutory underpinning of the existing Children First Interdepartmental Implementation Group, which promotes and oversees cross-sectorial implantation and compliance with Children First.
- The abolishment of the common law defence of reasonable chastisement.

The key government policy document *Children First: National Guidance for the Protection and Welfare of Children 2017* is intended to help people recognise child abuse and neglect and report concerns to Tusla.

Applies to

All persons working with children, and any adult who is in contact with children.

Further information

- Tusla. (2017). *Children First: National Guidance for the Protection and Welfare of Children 2017* and all supporting documents (see <https://www.tusla.ie/services/child-protection-welfare/children-first/>)
- Barnardos. (2018). *Protecting Children: A Child Protection Guide for Early Years and School Age Childcare Services* (4th edition). Dublin: Barnardos.

Protection of Persons Reporting Abuse

Protection of Persons Reporting Abuse Act 1998

Protected Disclosures Act 2014

In brief

The **Protection of Persons Reporting Abuse Act 1998** provides for the provision of immunity from prosecution to any person who reports child abuse ‘reasonably and in good faith’ to designated officers of Tusla or any member of An Garda Síochána. It provides for the provision of significant protection for employees who report child abuse. These protections cover all employees and all forms of discrimination up to and including dismissal. It creates a criminal offence of false reporting of child abuse where a person makes a report of child abuse to the appropriate authorities ‘knowing that statement to be false’. This is designed to protect innocent persons from malicious reports.

The **Protected Disclosures Act 2014** protects employees in the event of making a protected disclosure.

Applies to

All persons working with children, and any adult who is in contact with children.

Further information

- Tusla. (2017). *Children First: National Guidance for the Protection and Welfare of Children 2017* and all supporting documents
(see <https://www.tusla.ie/services/child-protection-welfare/children-first/>)
- Barnardos. (2018). *Protecting Children: A Child Protection Guide for Early Years and School Age Childcare Services* (4th edition). Dublin: Barnardos.
- The Workplace Relations Commission have a Code of Practice on Protected Disclosures
https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/cop12/

The UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child 1992

In brief

The **UN Convention of the Rights of the Child (UNCRC)** is essentially a ‘bill of rights’ for all children, outlining rights relating to every aspect of children’s lives, such as the right to survival, development, protection and participation. Principles include:

- Non-discrimination – all rights apply to all children.
- The best interests of the child – all actions concerning the child shall take account of his or her best interests.
- Survival and development – every child has the inherent right to life and the state has an obligation to ensure the child’s development.
- The child’s opinion – the child has the right to express his or her opinion and have it taken account of in any matter or procedure affecting him or her.

In addition, the Convention recognises the critical role of the family.

In accordance with the Convention, The Ombudsman for Children’s Office (OCO) was set up. The Ombudsman for Children’s Office (OCO) is an independent office that has two main roles: to deal with complaints made by or for children and young people about the actions of public organisations, and to promote the rights and welfare of children and young people under 18 living in Ireland.

Applies to

The UNCRC applies to all children.

Further information

- The Ombudsman for Children <https://www.oco.ie/childrens-rights/un-convention/>
- Children's Rights Alliance
<https://childrensrights.ie/childrens-rights-ireland/un-convention-rights-child>

SECTION TWO

EMPLOYERS & EMPLOYEES

This section includes the following
Employment Legislation: Adoptive Leave
Act; Carer's Leave Act; Employment
(Miscellaneous) Provisions Act; Force
Majeure Leave; Juries Act; Maternity
Protection Benefits; Organisation of Working
Time Act; Minimum Notice Acts; Parental
Leave Act; Terms of Employment Acts;
Unfair Dismissal Act

Employment Legislation (in alphabetical order)



Note: These lists are not exhaustive.

Adoptive Leave Acts 1995–2005

In brief

The **Adoptive Leave Acts 1995–2005** apply to adopting mothers under a contract of employment; all sole male adopters under a contract of employment; all adopting fathers under a contract of employment where the adopting mother has died before or during the period of adoptive leave or additional adoptive leave.

The entitlements are 24 consecutive weeks beginning at the date of placement and additional adoptive unpaid leave of 16 weeks. These additional 16 weeks, if taken, must follow the initial 24 weeks adoptive leave.

This leave is protected, which means the employee continues to accrue annual leave and public holiday entitlements while on adoptive and additional adoptive leave. The employee is also entitled to return back to the same role with the same terms and conditions or a role that is similar to it.

The adopting mother or sole male adopter should notify their employer in writing of their intention to take adoptive leave as soon as possible, but not later than four weeks before the expected date of placement.

For the most part, an employee is also entitled to:

- Time off from work, without loss of pay, to attend pre-adoption classes or meetings held within the State that the employee is obliged to attend, subject to the employee giving sufficient notice of the dates and times of these meetings/classes.
- Terminate additional adoptive leave where the employee is ill, to transfer to sick leave. This would be treated in exactly the same way as any employee's absence from work due to sick leave.
- Postpone the adoptive leave or additional adoptive leave where the adopted child is hospitalised. The same principles apply as outlined under the same circumstances for maternity leave.

An employee is obliged to give their employer notice in writing of their intention to return to work and their return date following adoptive leave.

Further information

- The Workplace Relations Commission
https://www.workplacerelations.ie/en/publications_forms/guide_to_the_adoptive_leave_acts.pdf

Carer's Leave Act 2001

In brief

The **Carer's Leave Act 2001** allows employees to take time off to provide care for people deemed relevant by the Department of Social and Family Affairs. There is an allowance of a total of 104 weeks that may be taken to provide care for the person requiring it. An employer may decide not to grant requests for carer's leave where the duration is less than 13 weeks. Where carer's leave is broken, there must be a minimum of six weeks between periods of the leave. During the first 13 weeks of the leave, an employee's right to annual leave and public holidays is maintained. An employee must give sufficient notice of their intention to take the leave as well as notice of their intention to return to work following carer's leave.

Employment (Miscellaneous) Provisions Act 2018

In brief

The **Employment (Miscellaneous) Provisions Act 2018** came into force on 4 March 2019. It amends the Terms of Employment (Information) Act, the Organisation of Working Time Act, the National Minimum Wage Act and the Unfair Dismissals Act (see below for more detail on these). This Act:

- Introduces the Day 5 statement
- Introduces banded hours
- Prohibits the general use of zero hour contracts
- Removes the training rates under the National Minimum Wage Act
- Amends the Unfair Dismissals Act to require a witness to attend an adjudication hearing

Day 5 Statement

An employee must receive a statement containing certain core terms of employment within the first five days of starting a job. This statement must be given to each employee within the five days even if the employment ceases before the end of the five-day period. This Day 5 statement is in addition to the full written statement of terms and conditions that an employee must receive within two months of commencing employment.

These core terms to be outlined in the Day 5 statement are as follows:

- Full name of the employer and employee
- The address of principal place of business
- The expected duration or expire date for fixed term or specified purpose contracts
- Rate or method of calculation of the employee's pay
- Number of hours which the employer reasonably expects the employee to work (a) per normal working day and (b) per normal working week

Banded hours

Where an employee regularly works more hours each week than is written in their contract of employment, the employee is entitled to request to be placed on a band of hours. They must have at least 12 months service and the band of hours should reflect the number of working hours they have typically worked per week over the previous 12 month period.

The employee must make the request in writing and, if they qualify to be placed on a band of hours, this must be done within four weeks of the date of the request.

An employer may refuse the request on the following grounds:

- Where there is no evidence to support the claim.
- Where exceptional, unusual or unforeseeable circumstances arise.
- Where there has been a significant adverse change impacting the business during or after the reference period.
- Where the average hours worked by the employee during the reference period was due to a temporary situation that no longer exists.

The statutory bands as are follows:

Band	From	To
A	3 hours	6 hours
B	6 hours	11 hours
C	11 hours	16 hours
D	16 hours	21 hours
E	21 hours	26 hours
F	26 hours	31 hours
H	36 hours or more	

Zero hour contracts / minimum floor payment

Employers will no longer be able to use zero hour working arrangements except for:

- Work done in emergency circumstances
- Short-term relief work to cover routine absences

Where an employee is required to make themselves available in a particular week for work and is sent home early, or where the hours rostered to work have been cancelled, then the employee must be paid a minimum floor payment of three times their hourly rate, which is at least the National Minimum wage or the minimum rate set down in any applicable Employment Regulation Order.

Force Majeure Leave

(as outlined by the **Parental Leave Acts 1998 and 2006**)

In brief

An employee is entitled to leave with pay in the event of the illness or injury of a family member where their presence is urgent and imperative. The persons for whom an employee can avail of force majeure leave are:

- Person to whom the employee is a parent or adoptive parent
- Spouse or partner of an employee
- Person to whom the employee is loco parentis
- Brother or sister
- Parent or grandparent
- Persons in a relationship of domestic dependency

As soon as is reasonably practicable, notice of force majeure leave should be given to the employer. This notice should contain details as to why the employee needed to take the leave. Employees will be entitled to up to three days paid force majeure leave in a 12-month period or up to five days in a 36-month period. An employee who takes part of a working day will be seen to have taken one day's entitlement.



Note: There are various criteria regarding the administration of the request for force majeure leave, which must be followed. For more information contact the Department of Employment Affairs and Social Protection

Juries Act 1976

(as amended by Section 54 and Section 64 of the **Civil Law (Miscellaneous Provisions) Act 2008**)

In brief

Section 29 of the **Juries Act 1976** applies whereby employees are provided with paid leave during their period of absence from the work place to attend jury duty. If a person is self-employed and works alone and attendance at jury service may mean they cannot earn a living, they may qualify for excusal from jury service. Contact the jury office of the Court for more information.

Maternity Protection Acts 1994–2004

In brief

The **Maternity Protection Acts 1994–2004** are the main Acts in relation to legislative provisions on maternity leave. The following statutory regulations also apply: Maternity Protection (Time Off for Ante-Natal Classes) Regulations 2004; Maternity Protection (Protection of Mothers who are Breastfeeding) Regulations 2004, Maternity Protection (Postponement of Leave) Regulations 2004; Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006.

Under these Acts, employees are required to give their employer at least four weeks written notice of their intention to take maternity leave, together with confirmation from their GP or hospital. An employee must advise the employer in writing of their return to work four weeks before they are expected to return.

Under the Acts, an employee who is pregnant is entitled to take 26 weeks paid (that is in receipt of Maternity Benefit) and 16 weeks unpaid leave.

- Employees are entitled to any public holidays and annual leave that occur during their maternity leave.
- Employees must take at least two weeks before the end of the week of the baby's expected birth and at least four weeks after.
- In the event of sickness of the employee (if this occurs during her last four weeks of maternity leave or if she is already on additional maternity leave) the employee may request to end her maternity leave and that her absence from work is sick leave. The employee is not then entitled to revert back to take the untaken period of additional maternity leave.
- If the child (for whom the maternity leave has been taken) is hospitalised, the employee may request that her employer postpones her maternity/additional maternity leave and that she can return to work on an agreed date. The maternity leave may only be postponed where the employee has taken at least 14 weeks maternity leave, four of which are after the end of the week of confinement. The resumed maternity leave must be taken in one continuous block, referred to as 'resumed leave', to commence not later than seven days after the discharge of the child from hospital. The employee will be required to furnish appropriate evidence to her employer.
- An employee is entitled to paid time off to attend antenatal and post-natal medical appointments. The employee must provide the employer with notice of the appointments at least two weeks in advance and support this with appropriate documentation (e.g. an appointment card).

- Pregnant employees are entitled to paid time off from work for the purpose of attending one set of antenatal classes (other than the last three classes in such a set as these would normally occur after maternity leave has started). These classes may be attended during one or more pregnancies.
- Pregnant employees receive extra leave in the case of a premature birth. This additional leave will be added on to the end of the 26 weeks and is equal to the number of weeks from the baby's actual date of birth, up to two weeks before the expected date of confinement.
- Expectant fathers have a once-off entitlement to attend the last two antenatal classes, with pay, in a set of classes attended by the expectant mother.
- A breastfeeding mother is entitled to breastfeeding breaks, without loss of pay, where facilities for breastfeeding are provided in the workplace; or a reduction of working hours. The breastfeeding breaks apply to an employee up to 26 weeks after the date of confinement who has informed the employer of their intention to avail of the breaks. The breaks may be taken as follows:
 - One break of 60 minutes
 - Two breaks of 30 minutes each
 - Three breaks of 20 minutes each
 - Any other duration of the time as agreed by the employee and her employer.

An employee who chooses a reduction of working hours is entitled to identical periods, without loss of pay.



Note: Fathers are only entitled to maternity leave if the mother dies within 24 weeks of the birth. In these circumstances, the father may be entitled to a period of leave, the extent of which depends on the actual date of the mother's death. Where a father qualifies for leave under these circumstances, he also has an optional right to the additional maternity leave.

Minimum Notice Acts 1973–2001

In brief

The Minimum Notice Acts 1973–2001 cover employees who have 13 weeks or more service, although there are certain categories to which these Acts do not apply. An employee's notice depends on the length of their continuous service. The Acts outline the required minimum notice for terminating employment, and also the rights of the employees and employers regarding periods of notice.

Length of Service	Minimum Period of Notice
13 weeks–2 years	1 week
2–5 years	2 weeks
5–10 years	4 weeks
10–15 years	6 weeks
15 years and over	8 weeks

Continuous service is usually calculated from the date of commencement of employment to date of termination. Length of service is calculated where an employee is expected to work eight hours or more a week.

An employer or employee may waive the right to notice and an employee may accept payment in lieu of notice. If an employee accepts payment in lieu of notice, the date of termination will be the date on which the notice would have expired. This option should be cited in contracts of employment. If employers indicate a specific notice period in their contract of employment, for example one month, this is acceptable.

Organisation of Working Time Act 1997 (Rest Periods)

In brief

Employees are entitled to either:

- A break of 15 minutes for every 4 hours worked or
- A break of 30 minutes for every 6 hours worked (not both)



Note: Employers should be aware that if they have a part-time employee who is also working elsewhere, their accumulative hours should not exceed 48 hours per week. Weekly working time can be averaged out over a four, six or up to 12-month reference period. The reference period for the early years sector would normally be a four month period. Employers are prohibited from employing employees to work on any day or during any week where the employee has worked for another employer(s), where the aggregate of the periods worked exceeds that permitted by legislation. Both the employer and the employee may both be liable to prosecution if this legislation is breached.

Night workers are employees who normally work at least three hours of their daily working time during night time and the annual number of hours worked at night equals or exceeds 50% of annual working time. Night workers can work 48 hours per week averaged over two months or a longer period specified in a collective agreement which must be approved by the Labour Court.

In a case where an employee works on a Sunday, under the Organisation of Working Time Act they must receive a premium for Sunday working using one of the following:

- Payment of a reasonable allowance
- Increasing the employee's rate of pay by a reasonable amount
- Granting the employee reasonable paid time off from work
- A combination of two or more of the above means

If an employee is required to work on Sundays this needs to be detailed in their contract of employment along with how the premium will be compensated using one of the above means. While the Working Time act does not specify what is a 'reasonable allowance', recent case law suggests offering a premium of 30% or time and one third.

To ensure that both the employer and the employee are in compliance with the legal requirements, it is necessary for all employees to provide the service they are employed in with details of any other employment(s) in which they are engaged. Employees who are self employed are excluded as are some other categories.

Where employees may be working in two employments, they are entitled to be paid under public holiday entitlement by both employers should they meet the criteria.

Organisation of Working Time Act 1997 Section III (Holidays/Annual Leave and Public Holidays)

In brief

The statutory leave entitlement has been 20 days since 1 April 1999. Some early childhood services provide a greater annual leave entitlement than the statutory minimum. Calculations of annual leave entitlements are as follows:

- Where staff are working more than 1,365 hours in a leave year, they are entitled to four working weeks (i.e. 20 days) annual leave.
- If the number of hours worked by an employee is less than 1,365 hours, annual leave must be calculated on a monthly basis as follows:
 - Where staff work at least 117 hours in a month they are entitled to 1/3 of a working week for that month.
 - Where staff work less than 117 hours they are entitled to 8% of the hours worked in the leave year, subject to a maximum of 20 days (four working weeks) per annum.



Note: Some employees will fall within each of the last two entitlements. Whichever calculation provides the employee with the greater entitlement should be applied (subject to the four working weeks maximum).

Leave can be calculated on a pro-rata basis where staff work part-time hours.

For example, if 20 days is the full entitlement, and an employee works four days a week, then they are entitled to 16 days leave (20 divided by 5 x 4 = 16).

In the event that the employer requires an employee to take annual leave at a particular time, for example if a service is closed for a particular week/day, the employee must be provided with at least one month's notice before the proposed leave. This could also be outlined in the contract of employment.

Organisation of Working Time Act 1997

Organisation of Working Time (Records) (Prescribed Form and Exemption) Regulations 2001

In brief

The **Organisation of Working Time Act 1997** and **Regulations 2001** impose a duty on employers to keep records which show compliance with the provisions of the Act, and stipulate the manner in which these records should be recorded.

The records to be retained are:

- Details of the days and total hours worked in each week by each employee.
- Annual leave and public holidays and the payment received in respect of that leave.
- ‘Additional day’s pay’ paid to employees in respect of public holiday entitlements.
- A copy of any notice given to employees in relation to information about starting, finishing times and notice of additional working hours.
- The name and address, PRSI and a brief statement of duties (this can be a reference to a job description) of each employee.
- A copy of the statement of terms and conditions of employment given to each employee under the Terms of Employment Information Act, 1994 (i.e. contract of employment).

In the absence of ‘clocking in’ facilities, the employer must record the days and hours worked by each employee using a Form OWT 1. Employers may design their own form as long as it contains the same information as the OWT 1 Form.

The Parental Leave Acts 1998 and 2006

Parental Leave Regulations 2013

Parental Leave (Amendment) Act 2019

In brief

The **Parental Leave Acts** entitle an employee who is acting *in loco parentis* to a maximum 22 working weeks' *unpaid* parental leave for each child from 1 September 2019. This will rise to 26 weeks from 1 September 2020. The employee must have year of continuous service with the employer from whom the leave is being taken. Where an employee has more than three but less than 12 months' service, the employee is entitled to one week for every month of continuous service with the employer.

Parental leave can be taken in respect of a child up to 12 years of age. If a child was adopted between the ages of 10 and 12, leave in respect of that child may be taken up to two years after the date of the adoption order. In the case of a child with a disability or long-term illness, leave may be taken up to 16 years of age. Long-term illness in relation to a child means a long-term illness, the effect of which is that the level of care required for the child is substantially more than the level of care that is generally required for children of the same age who do not have any such long-term illness.

The 22 weeks per child may be taken in one continuous block or in separate blocks of not less than six weeks with a gap of at least 10 weeks between blocks. An employee can request to separate the leave into periods of days or even hours at the discretion of the employer. An employee who is entitled to parental leave with regard to more than one child (except in the case of multiple births) will only be entitled to 22 weeks leave in a 12-month period, unless the employer agrees otherwise. In the case of multiple births, the entitlement is 22 weeks per child.

Employees who are eligible for the additional weeks leave that was introduced in the 2019 Act, and come into scope again due to the increased age threshold from eight to twelve years, can now avail of the extra leave in one week blocks.

- Part-time employees are entitled to parental leave on a pro rata basis.
- An employee must give at least six weeks notice of their intention to avail of parental leave.
- Annual leave and public holiday entitlement is retained for employees on parental leave.

There are various criteria regarding the administration of the request for parental leave that must be followed. More information is available from the Department of Employment Affairs and Social Protection.



Note: Employees on maternity, adoptive, or parental leave maintain their entitlement to public holidays for the duration of their absence.

Parent's Leave and Benefit Act 2019

The **Parent's Leave and Benefit Act 2019** introduces two weeks *paid* parent's leave for each parent for all children born or adopted on or after 1 November 2019. The leave must be taken within the first year of the child's life / date of placement. It is the Government's intention to increase this by either seven or nine weeks by 2021.

Main provisions to note:

- Paid leave must be taken within 52 weeks of the child's birth/date of placement.
- Paid parental leave must be taken in periods of not less than one week in duration.
- Six weeks' notice of an intention to take a period of parental leave is required.
- There is one year's service requirement.
- Leave is not transferable between parents.

In limited circumstances, an employer may be able to postpone the leave for 12 weeks where the employer is satisfied that the taking of the leave would have substantial adverse effects on the business.

Paternity Leave and Benefit Act 2016

The **Paternity Leave and Benefit Act 2016** provides for statutory paternity leave of two weeks for new parents (other than the mother of the child). The provisions apply to births and adoptions on or after 1 September 2016. Paternity leave can begin at any time within the first six months following the birth or adoption placement.

Terms of Employment Acts 1994–2014

The **Terms of Employment Acts** set out the minimum information requirements that an employer must provide to an employee in a written statement of the terms and conditions of their employment no later than two months into their employment. This includes:

1. The place of work
2. The title of the job or the nature of the work
3. The date the employment started
4. Pay intervals (for example, weekly or monthly)
5. Any terms or conditions relating to hours of work (including overtime)
6. Paid leave (other than sick leave), including annual leave and public holiday entitlement

7. Sick pay
8. Times and duration of rest breaks
9. Pension and pension schemes
10. Period of notice to be given by employer or employee
11. Details of any collective agreements that may affect a person's terms of employment

An employer may not substantially change the terms and conditions of an employee without the employee's consent. Where a change arises, for example, if there is a salary increase, the employee should be notified in writing as soon as possible, but no later than a month after the change takes place.



Note: This statement is in addition to the Day 5 Statement as outlined on page 21.

Unfair Dismissals Acts 1977–2015

In brief

The combined purpose of the **Unfair Dismissals Acts 1977–2015** is:

- To protect employees from being unfairly dismissed from their employment.
- To set out criteria by which a dismissal may be considered fair or unfair.
- To provide redress where such a dismissal is found to be unfair.

Applies to

All persons employing staff and in employment.

Further information

- Workplace Relations Commission www.workplacerelements.ie
- National Employment Rights Authority www.employmentrightsireland.com

Other Employment Legislation

There are a number of other pieces of legislation relevant to employing staff and these are listed below. In all cases, please note that employment legislation is regularly reviewed and updated and employers are recommended to check frequently with the Department of Business, Enterprise and Innovation and the Department of Employment Affairs and Social Protection.

- Employment Equality Act 1998-2015
- Employment Permits (Amendment) Act 2014
- Industrial Relations Acts 1946-2015
- Pensions (Amendment) Act 2002
- Protected Disclosures Act 2014
- Protection of Employees (Fixed Term Work) Act 2003
- Protection of Employees (Part-Time Work) Act 2001
- Protection of Employees (Temporary Agency Work) Act 2012
- Protection of Young Persons (Employment) Act 1996
- Redundancy Payments Acts 1967-2014

Further information

- Department of Employment Affairs and Social Protection www.welfare.ie
- Department of Business, Enterprise and Innovation www.dbei.gov.ie
- Workplace Relations Commission www.workplacerelements.ie – they have a number of codes of practice in relation to grievances, disciplinary, young persons, etc.
- Citizen’s Information Board www.citizensinformation.ie
- Irish Business and Employers Confederation www.ibec.ie
- Irish Small and Medium Enterprises Association www.isme.ie
- Small Firms Association www.sfa.ie
- Irish Congress of Trade Unions www.ictu.ie
- National Employment Rights Authority www.employmentrightsireland.com

SECTION THREE **HEALTH & SAFETY**

This section includes Health and Safety Regulations; Tobacco Regulations; Fire Safety Regulations; Toy Safety; Infectious Diseases; Food Regulations





Note: Rules for electrical and gas installations/ appliances are included in Section 4.

Health & Safety Regulations

Safety, Health & Welfare at Work Act 2005

Safety, Health & Welfare at Work (General Application) 2007

In brief

The **Safety, Health and Welfare at Work Act** aims to promote the health, safety and welfare of everyone in the workplace. It outlines the requirements for the control of health and safety at work as well as the roles and responsibilities of employers, the self-employed, employees and others.

It is the duty of management to:

- Manage and conduct all work activities to ensure the safety, health and welfare of people at work.
- Design, provide and maintain a safe place of work.
- Identify hazards and assess and prevent risks.
- Plan, maintain and, where appropriate, revise systems of work that are safe and without risk to health.
- Provide and maintain welfare facilities for employees in the workplace.
- Consult with employees on health and safety matters and provide them with relevant information and training.
- Appoint one or more competent persons to specifically advise the employer on compliance with the health and safety laws.
- Report workplace accidents to the Health and Safety Authority.
- Prepare a written safety statement.
- Display appropriate safety signs.

This Act also covers responsibilities of employees and others, such as ensuring that they are not under the influence of any intoxicant, reporting any defects in the workplace that might endanger health and safety and participating in safety and health training.

The Health and Safety Authority is responsible for enforcing and promoting health and safety at work. The role of their Inspectors is to provide advice and information during the course of an inspection. However, they also have a wide range of enforcement powers, which can result in prosecution.

Applies to

The Act and Regulations apply to every workplace in Ireland.

Further information

- Barnardos and Border Counties Childcare Network. (2006). *Health and Safety in Childcare: A Guide for Centre-based Services*. Dublin: Barnardos.
- Health and Safety Authority - You can download publications such as *Guide to the Safety, Health and Welfare at Work (General Applications) Regulations 2007* and *Safety Signs at Places of Work and First Aid* from www.hsa.ie

Tobacco Regulations

Public

In brief

Smoking has been prohibited in all workplaces in Ireland since March 2004.

Applies to

All workplaces in Ireland.

Further information

- Health Service Executive www.hse.ie

Fire Regulations

Fire Services Act 1981 & 2003



Note: Fire Safety also falls under the Safety, Health & Welfare at Work Act 2005 and Safety, Health & Welfare at Work (General Application) 2007.

In brief

The **Fire Services Act 1981 & 2003** applies to all premises used for instruction or recreation, teaching or training, and to premises used for any purpose involving access to the premises by members of the public.

Persons in control of these premises are required to take ‘all reasonable measures’ to guard against the outbreak of fire on the premises. In the event of a fire occurring, they must further ensure ‘as far as is reasonably practicable’ the safety of the children and staff on the premises.

This broadly translates as ensuring the following are in place:

- Properly constructed buildings.
- Fire safety programme.
- Fire prevention measures.
- Staff training.
- Emergency procedures and evacuation drills.
- Written public notices of fire evacuation procedures.
- Maintenance of fire protection equipment.
- Maintenance of building services.
- Furnishing and fittings compliant with requisite safety standards.
- Adequate escape routes.
- Fire safety records.
- Fire safety register.
- Mains smoke alarms.
- Proper waste paper management.

Since 2016, early childhood services have been required to have fire safety certification as part of the registration application.

Applies to

All early childhood education and care services in Ireland.

Further information

- Department of the Environment and Local Government. (1999). *Fire Safety in Pre-schools*
- Government of Ireland. (2006). *Technical Guidance Document B – Fire Safety*
- Department of Environment, Community and and Local Government. (2013). *Keeping Communities Safe: A Framework for Fire Safety in Ireland*
- National Directorate Fire and Emergency Management

(All of the above are available on the Department of Housing, Planning and Local Government website <https://www.housing.gov.ie/>)

Industrial Research and Standards (Fire Safety) (Domestic Furniture) Order SI 316 of 1995

Anyone manufacturing, selling or repairing furniture in Ireland is obliged to ensure materials used (including foams, fillings, coverings and frames) comply with safety standards. Specifically, furniture must pass the ‘cigarette test’. This test proves that covers, foam and lining materials are not likely to go on fire by a lit match or a cigarette. All furniture passing this test should be clearly labeled to indicate that it complies with Irish fire safety laws. The National Standards Authority of Ireland (NSAI) checks that items comply with the law. If you think that a product is unsafe you should contact the NSAI to report it.

The legislation covers furniture of any description that is ordinarily intended for use in a dwelling and includes beds and divans (including the bases and headboards of both), sofa beds, children’s furniture, cots (including carry-cots, playpens, prams and pushchairs and other articles of a like nature and use designed to contain a baby or small child), cushions, high chairs, mattresses and pillows but does not include bedding or floor coverings (including carpets and mats).

Further information

- Department of Environment. (1989). *Code of Practice for Fire Safety of Furnishings and Fittings in Places of Assembly*. Dublin: Stationary Office. Available to download from www.housing.gov.ie
- Irish standards can be accessed at the National Standards Authority of Ireland www.nsai.ie

Toy Safety

The European Communities (Safety of Toys) Regulations 1990 & 2011

In brief

Under the **European Communities (Safety of Toys) Regulations**, all businesses involved in placing toys on the market, including manufacturers, importers, distributors and retailers, have specific duties in ensuring that the toys meet strict safety standards. A toy is defined as any product intended, whether or not exclusively, to be used in play by children under the age of 14.

Specific rules also exist for ensuring the safety of children's products. For example, baby prams, pushchairs, pacifiers (soothers), cots and clothing. Playthings and equipment such as swings, slides, pencils and pens are also regulated. The National Standards Authority of Ireland (NSAI) develops standards governing safety, quality, design, performance etc. of specific products for sale in Ireland.

In addition, EU rules state that any product offered for sale in the EU that conforms to certain specific health, safety and environmental protection standards must carry a CE mark. The CE mark is a declaration by the producer that the product conforms to all the applicable EU legislation.

If you suspect that a toy is unsafe you should contact the Competition and Consumer Protection Commission on by emailing productsafety@ccpc.ie.

Further information

- National Standards Authority of Ireland www.nsai.ie
- Competition and Consumer Protection Commission www.ccpc.ie

Infectious Diseases

Infectious Diseases Regulations 1981–2018

In brief

The **Infectious Diseases Regulations 1981–2018** permit health authorities to take almost unrestricted measures to prevent the spread of infectious diseases. This includes diseases that might be food borne. The Regulations detail the illnesses that are notifiable to the Health Service Executive including Salmonella and Paratyphoid. Persons excluded from work as a result of being treated for certain infectious diseases may be paid an allowance by the HSE.

Further information

- Health and Safety Authority www.hsa.ie
- The appropriate Health Service Executive can be contacted for information (www.hse.ie); local general practitioners can also provide information.
- For information on best practices for minimising the spread of infectious diseases, see Health Protection Surveillance Centre. (2012). *Management of Infectious Disease in Childcare Facilities and Other Childcare Settings*

Food Regulations

Food Safety Authority Act 1998

E.C (Official Control of Foodstuffs) Regulations 1998 (contained within the Food Safety Authority Act, 1998)

E. C. Hygiene of Foodstuffs Regulations 2006 (S.I. No 369 of 2006) & Amendment Regulations 2009-2019

In brief

The **Food Safety Authority Act 1998** established the Food Safety Authority of Ireland (FSAI) and outlined its functions and responsibilities, which includes promotion of standards, and collection and assessment of data giving advice regarding food safety. The powers of the FSAI to enforce food safety standards in food legislation is detailed with reference to the official agencies who will carry out inspections for the FSAI in order to ensure compliance with food legislation, such as the HSE or the Local Authority.

The **E.C (Official Control of Foodstuffs) Regulations 1998** set out the various items that are subject to inspection by the Health boards, now the Health Service Executive. These include the site; premises; offices; raw materials; semi-finished products; infestations of rats and mice; cleaners and materials coming into contact with foodstuffs. They also set out the frequency of inspections and powers of entry for officers authorised under the Regulations.

The **E.C. Hygiene of Foodstuffs Regulations 2006** and subsequent amendments set out the obligations on owners of food businesses to ensure that the business is operated in a hygienic way. The rules of hygiene cover requirements for premises, rooms where food is prepared, foodstuffs, transportation, equipment, food waste, water supply, personal hygiene and training. Owners are also obliged to identify steps in the activities of the business that are critical to ensuring food safety and to ensure that adequate safety procedures are identified, implemented and reviewed (HACCP*). These Regulations also provide for the Food Safety Authority of Ireland to approve Guides to Good Hygiene Practice, which may be used voluntarily by food businesses as a guide to compliance with these Regulations.



Note: * HACCP (Hazard Analysis and Critical Control Point) is a systematic approach to identifying and controlling hazards that could pose a danger to the preparation of safe food. It involves identifying what could go wrong and planning to prevent it. All staff involved in preparing and serving food should participate in the HACCP training.

Applies to

All early childhood education and care services where food is prepared. There is also a requirement to ensure that catering suppliers who provide food for the service operate under the Regulations.

Further information

- Food Safety Authority of Ireland (FSAI) www.fsai.ie
- Department of Health and Children (2004) *Food and Nutrition Guidelines for Pre-School Services* <https://health.gov.ie/wp-content/uploads/2014/03/Food-and-Nutrition-Guidelines-for-Pre-School-Services.pdf>

SECTION FOUR **BUILDINGS &** **ENVIRONMENT**

This section includes Building Regulations;
Planning Regulations; Water Supply
Regulations; Electricity and Gas Installation
Rules; and requirements regarding Radon Gas

Building Regulations

Building Control Act 1990– 2014

Building Regulations 1997–2017

Building Control Regulations 1997–2015



Note: All new buildings, material changes of use, material alterations and extensions to existing buildings must comply with the Building Regulations. Building Regulations do not apply to buildings constructed prior to 1992, however renovations and extensions to these buildings must comply.

Building Regulations provide for the health, safety and welfare of people in and about buildings, provide access for people with disabilities to the build environment and provide for the conservation of fuel and energy in relation to buildings. The Regulations are constantly being revised and updated.

The legislation governing the Building Regulations is set out above. Technical Guidance Documents (TGDs) are provided to give guidance on how to comply with the requirements of the Regulations. A Commencement Notice must be submitted to the local Building Control Authority (Local Authority) in advance of the work commencing.

On the 1st March 2014, new regulations (S.I. 9 of 2014) relating to the commencement and certification of construction works came into effect. For certain building works, the new regulations require that certificates of compliance and other documents must be submitted with the Commencement Notice.

A Fire Safety Certificate must be obtained before work can begin on all non-residential buildings.

Compliance with the requirements of the Building Regulations rests with the owners and builder of the building.

Further information

- Department of Housing, Planning and Local Government www.housing.gov.ie
- Construction Industry Register Ireland (CIRI) www.ciri.ie

Planning Regulations

Planning and Development Acts 2000–2006

Planning and Developments Regulations, 2001–2018 Planning and Development (No.2) Regulations 2007 (S.I. 135 of 2007)

In brief

The **Planning and Development Act 2000** (as amended) forms the foundations for planning in Ireland. This Act covers a huge range of planning-related issues, and combines a wide range of different legislation into one place.

Applies to

The responsibility for compliance with Planning and Development Regulations rests with designers, builders and building owners.

Further information

- Department of Housing, Planning and Local Government www.housing.gov.ie
- Government of Ireland. (2001). *Childcare Facilities: Guidelines for Planning Authorities*. The Stationery Office: Dublin.

Water Supply Regulations

Water Services Act 2013

European Communities (Drinking Water) (No. 2) Regulations 2007

European Union (Drinking Water) Regulations 2014

European Union (Drinking Water) (Amendment) Regulations 2017

In brief

Incorporated in July 2013 as a company under the **Water Services Act 2013**, Irish Water brought water and wastewater services of the 31 local authorities together under one national service provider.

The current **Drinking Water Regulations** (S.I. No. 122 of 2014) came into force in 2014 and were amended in 2017 (S.I. No. 464 of 2017). These regulations provide the Environmental Protection Agency (EPA) with supervisory powers for public water supplies. The EPA can direct Irish Water to improve the management or quality of a public water supply. The Local Authorities have a similar supervisory role in relation to group water schemes and small private supplies. Under the regulations, Irish Water must notify the EPA of drinking water quality failures or risk to public health from a public water supply.

Applies to

All premises and workplaces.

Further information

- Irish Water www.water.ie
- The Environmental Protection Agency www.epa.ie

Electricity and Gas

In brief

There are rules governing the installation and use of electrical and gas appliances and systems. Electrical installation, including wiring, sockets, switches and distribution boards, should be in accordance with the National Rules for Electrical Installations (ET 101), produced by the Electro-Technical Council of Ireland (which is no longer in operation). The operations previously undertaken by the ETCI are now undertaken by the National Standards Authority of Ireland (NSAI) and the Commission for the Regulation of Utilities (CRU).

All gas installations, storage tanks, pipe lines, gas burning flues and other equipment should be installed, fitted and maintained in accordance with the appropriate standards including IS 813:2014 Domestic gas installations.

Applies to

All premises and workplaces.

Further information

- National Rules for Electrical Installations (see National Standards Authority of Ireland www.n sai.ie)
- Commission for the Regulation of Utilities (CRU) www.cru.ie

Radon

Radiological Protection Act 1991 (Ionising Radiation) Order 2000 (S.I.125 of 2000)

In brief

Exposure to high radon levels may occur in the home, in school or in the workplace.

Indoor radon levels vary greatly from one building to another and in some workplaces radon may be a significant source of occupational exposure to ionising radiation. Since May 2000, occupational exposure to natural radiation sources, including radon, has been subject to regulatory control in Ireland. This change is in line with the most recent revision to the Euratom Basic Safety Standards Directive (Council Directive 96/29/ EURATOM), which establishes a common basis for radiation protection legislation in all European Union Member States. The Office of Radiological Protection (ORP) in the Environmental Protection Agency is responsible for ensuring that people and the environment in Ireland are protected from the harmful effects of ionising radiation.

Applies to

All workplaces where there may be sources of radiation.

Further information

- Environmental Protection Agency www.epa.ie/radiation
- National Standards Authority of Ireland www.nsai.ie



Note: Fire Safety Regulations are in Section 3 Health and Safety.

SECTION FIVE FINANCE

This section includes Tax Regulations; National Minimum Wage Act; Payment of Wages

Tax Legislation

Income Tax Act 1967

Tax Consolidation Act 1997 (TCA 1997)

Finance Act 2018

In brief

As with any employer, it is the responsibility of the owner or management committee of any early childhood education and care service to notify Revenue within one month of commencing business by filing a tax registration application form. If the service operates as a limited company, the company must be registered with the Companies Registration Office and will be bound to comply with the Companies Act for tax purposes (see Section Six for more on the Companies Act). It will also need to prepare audited annual accounts. There is a ‘small companies’ exemption which relaxes the filing obligations, where certain size criteria are met. A company can avail of ‘small company’ exemptions if two of the following three criteria are satisfied in respect of the financial year in question: the balance sheet total does not exceed a certain amount; the turnover does not exceed a certain amount; the average number of employees does not exceed a certain number (currently 50).

Employers are responsible for deducting the correct amount of tax, PRSI and Universal Social Charge from employees’ wages and remitting these to Revenue using the PAYE system. Services also pay employer’s PRSI contributions.

Services are advised to get professional guidance from a suitably qualified financial professional and, if registering as a limited company, will need to engage the services of an accountant and a registered auditor.

Applies to

All early childhood education and care services as appropriate (self-employed, limited companies and committee managed). All employees of these services.

Further information

- Office of the Revenue Commissioners www.revenue.ie

Minimum Wage

National Minimum Wage Act 2000

National Minimum Wage Order (2017)

In brief

This Act provides a set minimum rate of pay for employees. Since 1 January 2019 the rate has been €9.80 per hour. The basic method of calculation is to divide the gross pay by the number of hours worked, however, it is necessary to note what pay is taken into account, what hours are included as working hours and what is the pay reference period. For example, there are a number of items that may not be included in the minimum wage calculation such as overtime payments.

Since 4 March 2019, wage rates are solely based on age. There are some exceptions to those staff who are entitled to receive the minimum wages, for example a person employed by a close relative or people engaged in statutory apprenticeships.

	Minimum Hourly Rate of Pay €	% of Minimum Wage
National minimum wage (Aged 20 and over)	9.80	100
Aged under 18	6.86	70
Aged 18	7.84	80
Aged 19	8.82	90

Employers are obliged to keep records for a three-year period to ensure that they are meeting the requirements of the Act.

Further information

- Workplace Relation Commission www.workplacerelements.ie

Payment of Wages

Payment of Wages Act 1991

In brief

The **Payment of Wages Act 1991** regulates the payment of wages. Wages include the employee's basic pay, overtime payments, shift allowances, fees and bonuses paid as part of the contract of employment, holiday, sick or maternity pay, any other payment covered by the contract of employment and payment due to an employee in lieu of notice. The employee must receive a written statement of their wages each time a payment is made.

A change in the method of payment of wages can only be made with the prior consent of the employee.

An employer may not make a deduction from an employee unless the deduction is required by law (i.e. tax/PRSI under statute or legislation) or authorised under the employee's contract or is made with the prior consent of the employee. This also applies to receipt of any payment from an employee. An employer may make deductions from an employee's wages in certain cases, further advice should be sought on this.

Further information

- Institute of Chartered Accountants in Ireland www.charteredaccountants.ie
- Institute of Certified Public Accountants in Ireland www.cpaireland.ie

SECTION SIX **MANAGEMENT &** **GOVERNANCE**

This section includes Companies Acts;
Equality Legislation; Insurance Requirements;
Freedom of Information, Data Protection and
Charities Act

General

Companies Act 2014

In brief

The Companies Acts cover a number of areas, such as the legal aspects of establishing and running a company; the roles and responsibilities of directors; articles of association (by-laws of the company) and financial duties and responsibilities.

Applies to

All limited companies in Ireland.

Further information

- Companies Registration Office www.cro.ie

Equality Legislation

Equal Status Acts 2000–2015

Employment Equality Acts 1998–2015

In brief

The **Equal Status Acts 2000–2015** prohibit discrimination in the provision of goods and services, accommodation and education. They cover the nine grounds of gender, marital status, family status, age disability, sexual orientation, race, religion, and membership of the Traveller community.

The **Employment Equality Acts 1998–2015** aim to promote equality; ban discrimination across the nine grounds outlined above; ban sexual and other harassment; ban victimisation; make sure suitable facilities for people with disabilities are available in relation to access to employment,

advancing in employment and taking part in training; allow positive action to ensure everyone gets full equality across the nine grounds.

The Acts apply to full-time, part-time and temporary employees, public and private sector employment, vocational training bodies, employment agencies, trade unions, professional and trade bodies. The aspects of employment covered under the Acts include advertising, equal pay, access to employment, vocational training and work experience, terms and conditions of employment, promotion or re-grading, classification of posts, dismissal and collective agreements.

The Irish Human Rights and Equality Commission is Ireland's national human rights and equality institution and has information and codes of practice relating to equality in employment on its website.

Further information

- Irish Human Rights and Equality Commission www.ihrec.ie
- The Workplace Relations Commission have a code of practice on harassment and sexual harassment which sets out how businesses can manage this or form a policy on this www.workplacerelations.ie

Insurance Requirements

Insurance companies stipulate minimum requirements. For example, a recommended requirement would be that sufficient adults are present on outings, i.e. one adult to each two pre-school children up to six years of age and one adult to three children between six and 12 years. An outing is regarded as anything off the premises, such as accessing local play areas. Transport in cars requires adequate insurance cover, whether on trips or for emergencies such as attending the local doctor. Appropriate car seating should be in place, relevant to the age of the child being transported.

Regulation 28 of the Childcare Act 1991 (Early Years Services) Regulations 2016 stipulates that a person carrying on a pre-school service must ensure that pre-school children attending the service are adequately insured against injury.

Freedom of Information

Freedom of Information Act 2014

In brief

The **Freedom of Information Act 2014** provides the following statutory rights:

- A legal right for each person to access information held by a body to which Freedom of Information (FOI) legislation applies.
- A legal right for each person to have official information relating to himself/herself amended where it is incomplete, incorrect or misleading
- A legal right for each person to obtain reasons for decisions affecting himself/herself.

These rights mean that people can seek access to personal information held on them by the listed bodies no matter when the information was created, and to other records created after 21 April 1998. People have a right to correct this information if it is inaccurate.

With regard to child protection, the exemptions and exclusions that are relevant include the following:

1. Protecting records covered by legal professional privilege.
2. Protecting records which would facilitate the commission of a crime.
3. Protecting records which would reveal a confidential source of information.

Applies to

All persons in Ireland. The records of organisations with whom Pobal have a Contract for Service are covered under the Freedom of Information Act.

Further information

- Office of the Information Commissioner www.oic.ie
- Freedom of Information Central Policy Unit www.foi.gov.ie

Data Protection

Data Protection Acts 1988–2018

General Data Protection Regulations

In brief

Data protection concerns everyone’s fundamental right to privacy. The **General Data Protection Regulation (GDPR)** and the **Data Protection Acts** govern the processing of personal data by organisations and grant privacy rights to individuals. Data Protection legislation covers a variety of activities relating to personal data of individuals, including:

- Taking and storing photographs and/or videos.
- Use of CCTV and making and storing voice recordings
- Creating and receiving emails or other correspondence
- Storing or archiving a file or document for future use (either paper or electronic)
- The recording of information via phone calls
- The recording and updating of personal details

Data protection applies to data held on parents and children as well as employees. Under data protection legislation, individuals have a number of rights. These are

- To be informed why and how the data is being processed, how long it will be stored etc.
- To access information relating to their own personal data
- To rectify any inaccuracies in their personal data
- To have their data erased under a number of grounds
- To data portability, i.e. to obtain and reuse their personal data for their own purposes across different services
- To object to the processing of their personal data
- To request the restriction or suppression of their personal data
- Rights relating to automated decision making, including profiling

Data protection legislation has been built around seven key principles.

1. Lawfulness, fairness and transparency – personal data should be processed lawfully, fairly and in a transparent manner in relation to the data subject.
2. Purpose limitation – personal data should only be collected for a specific, explicit and legitimate purpose.
3. Data minimisation – personal data processed should be adequate, relevant and limited to what is necessary in relation to the processing purpose.
4. Accuracy – data that is inaccurate or incomplete should be updated or deleted
5. Storage limitation – personal data should be deleted when no longer needed
6. Integrity and confidentiality – personal data should be kept safe and protected against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.
7. Accountability – organisations are responsible for compliance with GDPR and must be able to demonstrate compliance

Data controllers have to comply with these data protection principles. A data controller is someone who controls and is responsible for the keeping and use of personal information. Data controllers can be either individuals or ‘legal persons’ such as companies.

The Data Protection Commission is responsible for monitoring the application of data protection legislation in order to protect the rights and freedoms of individuals in relation to the processing of personal data.

Data access requests

An individual has the right access their personal data which will come in the form of a data access request. Businesses must provide this free of charge and must pass over their personal data within one month of the request.

Applies to

Every person in Ireland is covered by the Act. Every early childhood education and care service is a data controller.

Further information

Data Protection Commission www.dataprotection.ie

Charities Acts

Charities Act 2009

In brief

Charitable organisations in Ireland are regulated by the **Charities Act 2009**. The main provisions of the Charities Act 2009 came into effect on 16 October 2014. The Act established the Charities Regulatory Authority as the body to ensure compliance with the provisions of the Act.

The Act sets out a definition of charitable purpose as well as the registration and reporting requirements of charitable organisations.

Applies to

Charitable organisations.

Further information

- Charities Regulatory Authority www.charitiesregulator.ie
- The Wheel (support, advocacy and leadership for community and voluntary activity) www.wheel.ie

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