

# Industrial Relations (Amendment) Act 2012

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Employment  
regulation  
orders.

**12.—** The Act of 1946 is amended by inserting the following new sections after section 42:

“Proposals by joint labour committees in relation to remuneration and conditions of employment.

42A.— (1) Subject to this section and section 42B, a joint labour committee may, where it is satisfied that such proposals would promote harmonious relations between workers and employers and avoid industrial unrest, submit proposals for an employment regulation order to the Court.

(2) Subject to subsection (3), proposals under subsection (1) may include proposals to amend or revoke an employment regulation order.

(3) Where an employment regulation order has been in force for less than 6 months a joint labour committee shall not submit proposals for amending or revoking such order unless the committee is satisfied that—

(a) the order contains an error, or

(b) exceptional circumstances exist which warrant the revocation or amendment of the order.

(4) Subject to subsection (5) proposals under subsection (1) may include proposals to—

(a) fix the minimum rates of remuneration to be paid generally, and

(b) regulate the conditions of employment,

in relation to all or any of the workers in relation to whom the joint labour committee operates, and such proposals may provide for a minimum hourly rate of remuneration and not more than 2 higher hourly rates of remuneration based on length of service in the sector or enterprise concerned, or the attainment of recognised standards or skills in the sector concerned, for all or any such workers.

(5) Proposals under subsection (1) to fix remuneration shall provide that a worker to whom the proposals are intended to apply who—

(a) has not attained the age of 18 years,

- (b) enters employment for the first time after attaining the age of 18 years,
- (c) having entered into employment before attaining the age of 18 years continues in employment on attaining that age, or
- (d) has attained the age of 18 years and, during normal working hours, undergoes a course of study or training prescribed in regulations made by the Minister under section 16 of the National Minimum Wage Act 2000,

shall be remunerated at an hourly rate reduced to the percentage set out in section 14, 15 or 16 of that Act for the category of worker concerned and those sections shall apply with the necessary modifications, as if such workers were employees for the purposes of that Act.

(6) When formulating proposals to submit to the Court under subsection (1), a joint labour committee shall have regard to the following matters:

- (a) the legitimate interests of employers and workers likely to be affected by the proposals, including—
  - (i) the legitimate financial and commercial interests of the employers in the sector in question,
  - (ii) the desirability of agreeing and maintaining efficient and sustainable work practices appropriate to the sector in question,
  - (iii) the desirability of agreeing and maintaining fair and sustainable minimum rates of remuneration appropriate to the sector in question,
  - (iv) the desirability of maintaining harmonious industrial relations in the sector in question,
  - (v) the desirability of maintaining competitiveness in the sector in question, and
  - (vi) the levels of employment and unemployment in the sector in question;
- (b) the general level of wages in comparable sectors;

- (c) where enterprises in the sector in question are in competition with enterprises in another Member State, the general level of wages in the enterprises in that other Member State taking into account the cost of living in the Member State concerned;
- (d) the national minimum hourly rate of pay declared by order for the time being in force under section 11 of the National Minimum Wage Act 2000 , and the appropriateness or otherwise of fixing a statutory minimum hourly rate of pay above that rate; and
- (e) the terms of any relevant national agreement relating to pay and conditions for the time being in existence.

(7) In this section 'remuneration' means consideration, whether in cash or in kind, which a worker receives from his or her employer in respect of his or her employment but does not include:

- (a) pay or time off from work in lieu of public holidays;
- (b) compensation under section 14 of the Organisation of Working Time Act 1997 resulting from the requirement to work on a Sunday;
- (c) payments in lieu of notice; or
- (d) payments referable to a worker's redundancy.

Proposals by joint labour committee for employment regulation orders.

42B.— (1) Where a joint labour committee has formulated proposals for an employment regulation order, the committee shall publish a notice stating—

- (a) the place where copies of the proposals may be obtained,
- (b) that representations with respect to the proposals may be made to the committee not later than 21 days after the date of such publication.

(2) A joint labour committee shall consider any representations made in accordance with subsection (1) and may, subject to any amendments it considers appropriate following such consideration, adopt the proposals.

(3) The chairman of a joint labour committee shall facilitate the parties in reaching agreement in relation to the formulation of proposals for an employment regulation order and the adoption of such proposals, and for that purpose the chairman may adjourn a meeting of a joint labour committee.

(4) Notwithstanding section 26 of the Industrial Relations Act 1990 , where a joint labour committee has failed to formulate proposals or where it has formulated proposals and has failed to adopt such proposals, and the chairman is satisfied that no further efforts on his or her part will advance the committee in reaching agreement, the chairman may, and shall if requested by a member of the committee, submit the outstanding issues to the Court for its recommendation.

(5) The Court shall, not later than 21 days after receipt of a submission under subsection (4), hear the members of the joint labour committee.

(6) The Court shall, not later than 14 days after a hearing under subsection (5), make a recommendation to the joint labour committee.

(7) When making a recommendation under subsection (6), the Court shall—

(a) be satisfied that the terms of the recommendation would promote harmonious relations between workers and employers and avoid industrial unrest, and

(b) have regard to the following:

(i) the representations made by the parties at the hearing;

(ii) any relevant code of practice for the purposes of the Industrial Relations Act 1990 ;

(iii) the economic and commercial circumstances in relation to the sector to which the joint labour committee relates;

(iv) the rates of remuneration and conditions of employment of workers in similar employment sectors, including workers in a sector to which another joint labour committee relates;

(v) the merits of the dispute and the terms upon which it should be settled.

(8) Not later than 14 days after the Court makes a recommendation under subsection (6), the joint labour committee shall hold a meeting to consider the recommendation.

(9) Where, at a meeting held under subsection (8), the joint labour committee fails to formulate or adopt proposals for an employment regulation order, the issues in dispute shall be determined by a majority of the votes of the members present and voting on the issue and, notwithstanding subparagraph (1) of paragraph 6 of the Fifth Schedule to the Industrial Relations Act 1990 , if there is an equal division of votes the chairman shall cast his or her vote having regard to the recommendation of the Court.

(10) Where the committee adopts proposals for an employment regulation order, it shall submit such proposals to the Court.

(11) When proposals for an employment regulation order are submitted to the Court, the chairman of the committee shall submit—

(a) a report to the Court on the circumstances surrounding their adoption, including confirmation that in considering the proposals the joint labour committee has had regard to the matters set out in subsection (6) of section 42A,

(b) a copy of all written submissions considered by the committee when formulating and adopting the proposals, and

(c) a copy of any other documentation considered by the committee when formulating the proposals.

(12) (a) When considering whether or not to adopt the proposals of a joint labour committee, the Court shall consider any reports, submissions or other documentation submitted under subsection (11).

(b) Where the Court has not made a recommendation under subsection (6), the Court may, where it considers it appropriate to do so, hear all parties appearing to the Court to be interested and desiring to be heard.

(c) The Court may, as it thinks proper and where the proposals are in a suitable form for adoption, adopt the proposals of a joint labour committee.

(d) The Court shall not adopt the proposals of a joint labour committee unless the Court is satisfied that, when considering the proposals, the committee has had regard to the matters set out in subsection (6) of section 42A.

(13) (a) Where the Court is not satisfied that it should adopt the proposals of a joint labour committee, it may submit to the committee amended proposals which the Court is willing to adopt.

(b) The committee may, if it thinks fit, submit the amended proposals, with or without modifications, to the Court.

(c) The Court may, as it thinks proper, adopt the proposals submitted under paragraph (b) or refuse to adopt the proposals.

Making of employment regulation orders.

42C.— (1) Where the Court adopts the proposals of a joint labour committee it shall forward a copy of the proposals to the Minister.

(2) As soon as practicable after receipt of a copy of proposals under subsection (1), the Minister shall, where he or she is satisfied that sections 42A and 42B have been complied with, and where he or she considers it appropriate to do so, make an employment regulation order giving effect to such proposals.

(3) Where the Minister is not satisfied that sections 42A and 42B have been complied with, or where he or she considers that it is not appropriate to make an employment regulation order to give effect to the proposals adopted by the Court, he or she shall—

(a) refuse to make an employment regulation order giving effect to such proposals, and

(b) notify the Court in writing of his or her decision and the reasons for the decision.

(4) An employment regulation order shall not prejudice any rights as to rates of remuneration or conditions of employment conferred on any worker by this or any other Act.

(5) An employment regulation order may amend or revoke any previous employment regulation order.

(6) Every order under subsection (2) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.”.