



May 2019

## Employment Law update – The Employment (Miscellaneous Provisions) Act 2018

[The Employment \(Miscellaneous Provisions\) Act 2018](#) (“the Act”) came into effect as of the 4 March 2019. The Act aims to improve the security and predictability of working hours for employees working under insecure contracts and employees working variable hours. There are a number of new obligations on employers under the Act, the most significant of which include:

### 1. *The introduction of the “Day 5 Statement”*

The Act obliges employers to communicate to new employees, in writing, their core terms of employment within five days of its commencement. The “Day 5 Statement” must include: the full names of the employer and employee, the full address of the employer, the expected duration and end date of the contract, the employee’s rate of pay, the method of calculation of wages, and the hours the employee is reasonably expected to work per normal day or week.

Employees can apply to the Workplace Regulations Commission (“WRC”) to receive up to four weeks’ remuneration in the event that their employer fails to provide a “Day 5 Statement” or provides false or misleading information.

A failure to provide a “Day 5 Statement” may result in the employer (including the director, manager, secretary or other officer) being charged with an offence punishable by a fine and/or 12 months imprisonment. The employer may also have to pay the WRC’s costs and expenses.

It is a defence for an accused to prove that they exercised due diligence and took reasonable precautions when preparing the “Day 5 Statement”.

For further information on any of the issues discussed in this article please contact:



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## 2. *Prohibition of zero-hour contracts*

Essentially, with certain exceptions, the prohibition on zero-hour contracts applies where an employee's contract requires them to make themselves available to work for a certain number of hours, or as and when required (or a combination of both). In appropriate cases, an employee may be entitled to be paid the pay they would have received, being either 25% of the expected hours or 15 hours, whichever is the lesser.

Under the Act, where an employer requires an employee to make themselves available for work for a certain number of hours but ultimately does not require the employee to actually work at least 25% of those hours, the employee is entitled to a minimum payment of 25% of those hours or 15 hours, whichever is the lesser.

It is important to note that the minimum rate of pay for these hours is **three times the national minimum hourly rate**.

## 3. *“Banded hours”*

The Act introduces a new concept of 'banded hours'. The Act sets out, in tabular form, eight bands (A-H) ranging from 3-6 hours to 36 hours and over, in increments of five hours.

Where an employee's contract does not accurately reflect the hours they actually worked on a weekly basis, the employee can request to be placed into a "band of hours" based on the average number of hours worked by the employee during a 'reference period' (i.e. a period of 12 months from the commencement of employment and immediately before the request is made). A request must be made in writing to the employer who will have four weeks to consider the request.

An employer may refuse to grant the request where: there is no factual justification for the request, there have been significant adverse changes that have impacted the business, emergency circumstances apply, or where the employee's hours have been the result of a genuinely temporary situation.

Once placed into a particular band, the employee must work, on average, the hours for that particular band, for at least 12 months.

An employee who remains dissatisfied may bring a complaint to the WRC. If successful, the WRC would require the employer to place the employee into an appropriate band but the employee would not be entitled to compensation. Either party may appeal the WRC's decision to the Labour Court.

## 4. *Employee anti-penalisation protection*

An employer must not penalise employees who exercise their rights under the Employment (Information) Act 1994 or the Organisation of Working Time Act 1997. Penalisation will be widely construed to include anything that causes detriment to the employee as a result of having asserted their rights.

### *Recommendations for employers*

In order to comply with these provisions and avoid penalty or criminal sanctions, employers must put in place systems that ensure that all new employees receive their “Day 5 Statement” immediately upon starting employment. Employers should record the working hours of their employees in preparation for requests under the Act and review any zero-hour contracts of employment currently in place.

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