

## A-Z Guide

# EMPLOYMENT RELATIONS ACT 2000



## Introduction

The Employment Relations Act 2000 came into force on 2 October 2000. It repealed the Employment Contracts Act 1991. This guide contains brief details on the main areas the Act covers. Many of the provisions of the Act are discussed in some detail in other A-Z guides available for AdviceLine or on our website.

### The important aspects of the Act are:

The Act outlines the various employment relationships between employers, employees, and unions:

- Employment relationships must be built on good faith behaviour; in addition to providing for a Code of Good Faith, the concept of good faith is the central feature of collective bargaining and underpins the Act.
- Employment relationships are expressed in either collective or individual employment agreements.
- The Act provides for multi-party collective agreements.

- The Act protects the freedom of association but seeks to address unequal bargaining power in employment relationships by promoting collective bargaining; only unions and employers can negotiate collective agreements.
- The Act prohibits any agreement, contract, or arrangement, conferring a greater benefit in relation to the obtaining or retaining of employment or any term or condition of employment, on any person because of their membership or non-membership of a union.
- Unions have the right to represent their members in relation to any matter involving their collective interests.
- Unions have rights of access to workplaces.
- Employers must allow every employee who is a union member (whether a collective agreement is in force) to attend two union meetings of up to two hours duration each year, on pay.
- A collective agreement cannot endure beyond three years. The Act provides for the continuation of a collective agreement after the specified expiry date for a period not exceeding 12 months if certain requirements are met.
- All new employment agreements must be in writing.
- Employers must retain a signed copy of the employee's individual employment agreement or current terms and conditions of employment. Where an intended agreement was provided you need to keep a copy even if it is not signed or agreed to.
- The Act prescribes the minimum contents of collective and individual employment agreements.
- The Act contains specific details covering hours of work requirements for collective and individual employment agreements.
- Employment agreements may contain a trial period, the details must be in writing and the trial period cannot exceed 90 days.
- An employee who is dismissed under a valid trial period provision is not entitled to bring a personal grievance in respect to the dismissal.
- Trial periods have specific rules.
- Probationary periods where agreed must be specified in writing in the employment agreement. The law relating to unjustified dismissal applies to probationary periods.
- Fixed term arrangements must be in writing and may not be used to exclude or limit an employee's rights or to establish the suitability of an employee for permanent employment.
- The Act includes provisions for paid rest breaks and unpaid meal breaks.
- The Act covers breastfeeding facilities and breaks.
- The Act recognizes that bargaining for an individual employment agreement may be unfair in certain circumstances and provides for remedies where unfair bargaining is established.

## The important aspects of the Act continued:

- Employees must be given the opportunity to seek independent advice on their intended employment agreement before entering the employment or when varying terms.
- The Act covers continuity of employment provisions if an employer's business is restructured in specified circumstances.
- The Act covers Flexible Working Arrangements.
- Unions are entitled to allocate Employment Relations Education Leave to eligible employees.
- Employment Relations Education Leave entitles the employee to leave on pay.
- Strikes and lock outs are lawful only if they occur either 40 days after the initiation of collective bargaining or are on health and safety grounds.
- A secret ballot is required before a strike.
- Notice of an intended strike must be provided in writing.
- Specific notice must be given if a proposed strike or lockout is to occur in an essential service.
- In the event of a proposed strike or lockout in an essential service, the Ministry of Business, Innovation, and Employment. Mediation Services must be provided.

- Employers may suspend striking employees and non-striking employees where a strike means there is no work for those employees.
- Employers must keep records of strikes and lockouts.
- Personal grievance grounds are listed in s103 of the Act.
- The Act contains a test of justification, s103A, in relation to dismissal and disadvantage claims.
- A personal grievance is the only way to challenge a dismissal or any aspect of a dismissal.
- The Act deals with personal grievances arising out of triangular employment arrangements. A triangular employment arrangement is generally made up of three parties: the employee, the employer and the controlling third party. Disputes, or operation of an employment agreement may be pursued under the Act. An employee cannot pursue a claim of sexual or racial harassment, or discrimination under both the ERA and the Human Rights Act 1993.
- Reinstatement is available as a remedy where it is sought, and an employee is found to have a personal grievance.
- The Employment Relations Authority and Employment Court have the power to order reinstatement on an interim basis.
- There is a 90-day limitation on the raising of personal grievances beginning on the day on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee.
- Employees can raise a personal grievance for sexual harassment with the Company within 12 months of the grievance arising or coming to your notice.
- There is a 14-day timeframe in which employers must provide a statement in writing providing a reason for their dismissal to a dismissed employee if that is requested within 60 days of the dismissal. The requirement does not apply to a dismissal under a trial period provision.
- The Act provides for a 3-tier problem resolution regime beginning with mediation and ending with the Employment Court which has the exclusive jurisdiction over employment relationships.
- Where any matter comes before the Employment, it has a duty to consider whether an attempt to resolve the matter at mediation has been made.
- The Act provides for a Mediation Service, operated by the Ministry.
- Mediators and Employment Relations Authority Members have the authority to sign full and final settlements of employment relationship problems.
- The Employment Relations Authority can facilitate collective bargaining where serious difficulties arise in concluding bargaining and in limited circumstances may fix the provisions of a collective agreement.
- The Employment Court and Employment Relations Authority will have the power to hear an assertion the claim is frivolous or vexatious and to dismiss the claim on those grounds.

## The important aspects of the Act continued:

- The Employment Relations Authority and the Employment Court have the power to order penalties for breaches of employment agreements and breaches of the Act.
- The Employment Relations Authority and Employment Court have the power to order compliance.
- Employers must keep a wages and time record for each of their employees which is accessible immediately to an employee (or their representative) on request.
- Labour Inspectors have wide powers of entry and inspection and may issue employers with improvement notices relating to matters such as meal break obligations, not responding in the legislative timeframes to matters like flexible working hour's requests, union access requests and demand notices relating to unpaid wages and labour-related legislation.
- A Labour Inspector may commence actions in the Employment Relations Authority to recover entitlements and wages and seek penalties.
- The Act provides for the following penalties.
  - for an individual, a maximum of \$10,000

- for a company a maximum of \$20,000

## Remember

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- Use our AdviceLine employer advisors as a sounding board to test your views.
- Get one of our Lawyers or Consultants to draft an agreement template that's tailor-made for your business.

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