

S.I. NO. 144 OF 2004

**EMPLOYMENT REGULATION ORDER (CATERING
JOINT LABOUR COMMITTEE (FOR AREAS OTHER THAN THE AREAS KNOWN,
UNTIL 1ST JANUARY, 1994, AS THE COUNTY BOROUGH OF DUBLIN AND THE
BOROUGH OF DUN LAOGHAIRE), 2004**

WHEREAS the Labour Court (hereinafter called ‘the Court’), pursuant to the provisions of the Industrial Relations Acts, 1946-2001, made an Employment Regulation Order dated 30th September, 2003 (S.I. No. 460 of 2003) (hereinafter called ‘the said Order’) fixing the statutory minimum rates of remuneration and regulating the statutory conditions of employment of workers in relation to whom the Catering Joint Labour Committee (for areas other than the areas known, until 1st January, 1994, as the County Borough of Dublin and the Borough of Dun Laoghaire) (hereinafter called ‘the Committee’) operates;

AND WHEREAS the Committee has submitted to the Court a proposal for revoking the said Order;

AND WHEREAS the Committee has also submitted to the Court the proposals set out in the Schedule hereto for fixing the statutory minimum rates of remuneration and regulating the statutory conditions of employment of workers in relation to whom the Committee operates;

AND WHEREAS the provisions of Section 48 of the Industrial Relations Act, 1990 have been complied with;

NOW, THEREFORE, the Court, in exercise of the powers conferred on it by Section 43(4) of the Industrial Relations Act, 1946, and by Section 48(4) of the Industrial Relations Act, 1990 hereby Orders as follows:-

- (1) This Order may be cited as the Employment Regulation Order (Catering Joint Labour Committee (for areas other than the areas known, until 1st January, 1994, as the County Borough of Dublin and the Borough of Dun Laoghaire), 2004.
- (2) Effect is hereby given to the proposals set out in the Schedule hereto.
- (3) The provisions set out in the Schedule hereto shall have effect as from 23rd April, 2004 and as from that date the said Order shall be revoked.

NOTE: Enquiries should be addressed to **The Secretary, Joint Labour Committees, The Labour Court, Tom Johnson House, Haddington Road, Dublin 4** (Telephone 01-6136666, Extension Nos. 6639, 6640, 6641 and 6642. “Lo-Call” number (if calling from outside (01) area) 1890 220 228).

SCHEDULE

PART I

WORKERS TO WHOM THIS SCHEDULE APPLIES

1. Workers employed in a catering establishment anywhere throughout the State except **the areas known until 1st January, 1994 as the County Borough of Dublin and the Borough of Dun Laoghaire** who are engaged on any of the following work, that is to say:-
 - (a) the preparation of food or drink;
 - (b) the service of food or drink;
 - (c) work incidental to (a) or (b) and performed at any store or warehouse or similar place in the catering establishment.

BUT EXCLUDING

- (i) Workers affected by any Employment Agreement, that is "an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union of workers and an employer or trade union of employers or made, at a meeting of a registered Joint Industrial Council, between members of the Council representative of workers and members of the Council representative of employers".
 - (ii) Workers to whom an Employment Regulation Order, made as a result of proposals received from another Joint Labour Committee, applies.
 - (iii) Managers, assistant managers and trainee managers.
2. In this Schedule "Catering Establishment" means a premises in respect of which a publican's licence (spirit retailers on-licence) under the Licensing Acts, 1833 to 1995, is held and which serves hot food for consumption on the premises, and a premises or part of a premises primarily used for supplying for reward to any persons, not for the time being resident on the premises, food or food and drink for consumption on the premises, including fish and chip shops and ice cream parlours.

BUT EXCLUDING

- (i) premises registered in the register of hotels under the provisions of the Tourist Traffic Acts, 1939 - 1998.
- (ii) premises licensed under the Licensing Acts, 1833 - 1995 and having not less than 10 apartments normally available for the sleeping accommodation of travellers.

PART II

DEFINITION OF JOB CLASSES AND STATUTORY MINIMUM RATES OF REMUNERATION PER WEEK.

1. **Classes of workers**

- (a) **Cook** - A person who has completed three years' service* at cooking duties and is engaged in the preparation and cooking of food for service to the public and/or staff.
- (b) **Short Order/Fast Service Cook** - A person who is solely involved in the preparation and/or cooking of any one or a combination of the following: hamburgers, beefburgers, fish, chips, pizza, pancakes and snack foods.
- (c) **Counter Assistant** - A person wholly or mainly engaged in the preparation and/or service of food at a counter and ancillary duties.
- (d) **Waiter/Waitress** - A person who has completed 2 years' service* and is wholly or mainly engaged in the service of food at table and ancillary duties.
- (e) **Barman/Barmaid** - A person who has completed 2 years' service* and is wholly or mainly engaged in the service of alcoholic drinks and other beverages and ancillary duties.
- (f) **Clerical Worker** - A person wholly or mainly engaged in clerical, reception and/or cashier duties.
- (g) **General Worker** - A person wholly or mainly engaged in any one or a combination of the following:- general kitchen portering duties, the preliminary preparation of food prior to cooking, and other general duties not covered in the definitions of the other classes of workers contained in this Order.
- (h) **Cleaner/Wash-up** - A person wholly or mainly engaged in cleaning and/or wash-up duties.

*Time spent on training courses will count as service.

2. Statutory Minimum Rates of Remuneration

	From 23rd April 2004 Per Week **	From 23rd January 2005 Per Week **	From 23rd July 2005 Per Week **
<u>All workers under age 18 in classes (b), (c), (f), (g) and (h)</u>	€200.49	€204.50	€208.59
Workers age 18 and over			
(a) <u>Cook:</u>			
1st year of training	€27.01	€31.55	€36.18
2nd year of training	€41.36	€46.19	€51.11
3rd year of training	€70.07	€75.47	€80.98
Trained - full rate	€98.76	€104.74	€110.83
Head Cook	€15.98	€22.30	€28.75
2nd Head Cook	€09.64	€15.83	€22.15
(b) <u>Short Order fast service cook</u>			
Full rate	€81.19	€86.81	€92.55
Twelve months' initial rate 90% of full rate	€53.07	€58.13	€63.30
(c) <u>Counter Assistant:</u>			
Full rate	€81.19	€86.81	€92.55
Twelve months' initial rate 90% of full rate	€53.07	€58.13	€63.30
(d) <u>Waiter/Waitress:</u>			
1st 8 months of training	€21.25	€25.68	€30.19
2nd 8 months of training	€32.82	€37.48	€42.23
3rd 8 months of training	€55.94	€61.06	€66.28
Full Rate	€81.19	€86.81	€92.55
Head Waiter/Waitress	€81.19	€86.81	€92.55
2nd Head Waiter/Waitress	€81.19	€86.81	€92.55
(e) <u>Barman/Barmaid:</u>			
1st 8 months of training	€21.25	€25.68	€30.19
2nd 8 months of training	€32.82	€37.48	€42.23
3rd 8 months of training	€55.94	€61.06	€66.28
Full Rate	€81.19	€86.81	€92.55
Head Barman/Barmaid	€81.19	€86.81	€92.55
2nd Head Barman/Barmaid	€81.19	€86.81	€92.55

Note: Training is **formal structured training** as defined in accordance with Section 16 of the National Minimum Wage Act, 2000. All workers in classes (a), (d) and (e) will receive the training rates as outlined above.

**** Service Charge** – In accordance with the provisions of the National Minimum Wage Act, 2000 service charge, when distributed to employees through the payroll, can form part of the weekly earnings referred to above.

	From 23rd April 2004 Per Week **	From 23rd January 2005 Per Week **	From 23rd July 2005 Per Week **
(f) <u>Clerical Worker:</u>			
Full rate	€281.19	€286.81	€292.55
Twelve months' initial rate 90% of full rate	€253.07	€258.13	€263.30
(g) <u>General Worker:</u>			
Full rate	€281.19	€286.81	€292.55
Twelve months' initial rate 90% of full rate	€253.07	€258.13	€263.30
(h) <u>Cleaner/Wash Up:</u>			
Full rate	€281.19	€286.81	€292.55
Twelve months' initial rate 90% of full rate	€253.07	€258.13	€263.30

**** Service Charge** – In accordance with the provisions of the National Minimum Wage Act, 2000 service charge, when distributed to employees through the payroll, can form part of the weekly earnings referred to above.

Board & Lodgings

If a catering employee receives board and lodgings, board only or lodgings only from his employer, the following amounts may be deducted from his pay:

€4.13	for <u>full</u> board and lodgings per week*, or €7.73 per day
€2.14	for <u>full</u> board only per week*, or €4.60 per day
€1.85	for lodgings only per week*, or €3.14 per day

Full board means an entitlement to breakfast, lunch and dinner.

*Per week means a 7 day week.

3. **Part-time or casual workers**

Any part-time or casual worker shall be paid pro-rata at the hourly equivalent of the weekly rate relative to his or her particular class as defined above.

4. **Twelve Months' Initial Rate:**

The twelve months' initial rate (90% of full rate without board) applies to workers in classes (b), (c), (f), (g) and (h) and applies for the first twelve months of employment in any of the five classes by any employer. This rate does not apply, or will cease to apply, two years after the date of an employee's first employment over age 18, whether that was with the current or any previous employer in any sector of employment.

5. **Apprenticeship ratios:**

A ratio of 1:1 (i.e. 1 trainee worker for every trained worker) will apply with derogation for attendance at C.E.R.T. training courses and/or a training programme organised with the approval of C.E.R.T.

6. **Service Charge:**

Gratuities and tips are not included in the rates of pay.

PART III

STATUTORY CONDITIONS OF EMPLOYMENT

Section I - Normal Working Hours:

The normal working fortnight for full time workers shall be any 10 days and shall consist of 78 hours for all workers aged 18 years and over.

Hours of Work for Young People

Young persons aged 14 and 15 may only be employed on holiday work (maximum of 35 hours per week and 7 hours per day) or on work experience (maximum of 40 hours per week and 8 hours per day). The normal number of hours for young persons aged 14 and 15 on holiday work shall be 70 hours in any fortnight, but must not exceed 35 hours per week and 7 hours per day, and for young persons on work experience shall be 78 hours in any fortnight, but must not exceed 40 hours per week and 8 hours per day.

The normal number of hours for young persons aged 16 or 17 shall be 78 hours in any fortnight but must not exceed 40 hours in any week and 8 hours per day.

Section II - Holidays

1. All employees are entitled to annual leave in accordance with the provisions of the Organisation of Working Time Act, 1997.
2. Entitlement in respect of Public Holidays is in accordance with the provisions of the Organisation of Working Time Act, 1997.
3. Six weeks' notice of intention to allow annual leave shall be given by employers to their workers.
4. Where a worker has worked on any public holidays throughout the year, the days off in lieu may be taken consecutively or added to the worker's annual leave.

Section III - Other Conditions of Employment:

1. Overtime shall be at the rate of time plus one half, for hours worked in excess of 39 hours per week. Work done on a day on which a worker would normally be off duty, including Sunday, shall be paid for at the rate of double time except where an option to take time off in lieu can be agreed between employer and worker.
2. Each worker shall be made aware of his rostered duty for each period of the rostered duty one week in advance of the commencement of rostered duty. Any hours worked in excess of rostered duty on any day shall be paid for at the overtime rate of time plus one half up to 12.00 midnight, and thereafter at double time.
3. A worker rostered to work night duty between the hours of 12.00 midnight and 7.00 a.m. which is not overtime, or which is not covered by a trade union negotiated shift pay agreement, shall be compensated by the payment of an allowance equivalent to 25% of his basic pay, for hours worked during that period.
4. **Sunday Work:**
 - (i) Within the 78 hour fortnight, every second Sunday shall be regarded as a day off.
 - (ii) Work performed on Sunday, as part of the normal roster, shall be paid at the rate of double time.

5. **Spreadover Duty/Finishing Time:**

- (i) The maximum period for spreadover duty shall not exceed 12 hours in any day, and workers subject to spreadover duty shall be entitled, in each week throughout the year, to one day at a maximum of 8 hours spreadover or 2 days at a maximum of 10 hours spreadover. The short spreadover shall be calculated from normal starting time unless otherwise agreed.
- (ii) For workers aged 18 years and over, a minimum period of 11 hours shall elapse between a worker's normal finishing time each night and starting time next morning.
- (iii) Permanent and casual workers aged 16 and 17 years of age shall not be required to work before 6.00 a.m. or after 10.00 p.m.
- (iv) Workers under 16 years of age shall not be required to work before 8.00 a.m. or after 8.00 p.m.

6. **Breaks:***

- (i) Workers under 16 years of age must have the following rest breaks:-

after each 4 hours:	half-hour
in each period of 24 hours:	14 consecutive hours
in any period of 7 days:	2 days off**
- (ii) Workers over 16 and under 18 years of age must have the following rest breaks:-

after 4 and a half hours:	half-hour
in each period of 24 hours:	12 consecutive hours
in any period of 7 days:	2 days off**
- * These provisions may be modified in relation to employment of close relatives in a family business.
- ** As far as practicable, the days off are to be consecutive.
- (iii) Workers aged over 18 shall be entitled to breaks and rest periods in accordance with the Organisation of Working Time Act, 1997.

7. **Certificate of Service:**

Each worker who has accumulated at least a total of the equivalent of six months full time service shall be entitled to the next full time rate provided at least one calendar year has elapsed since he or she commenced on the lower rate.

Each worker shall be entitled to receive from his employer on termination of his employment a certificate of service showing the period of his employment, the length of service and average weekly hours worked in each particular grade in which he or she may have been employed.

Section IV - General

Nothing in this Employment Regulation Order shall be taken to exclude, limit or be in any way inconsistent with the rights of any employee under any statutory enactment.

Section V - Bullying / Harassment / Grievance / Disciplinary Procedures

Each employer will include, in the conditions of employment, details of the procedure to apply in the event of issues arising in relation to bullying/harassment, grievance and discipline. In this regard the codes of practice contained in S.I. No. 17 of 2002 (Bullying in the Workplace), S.I. No. 78 of 2002, Employment Equality Act, 1998 (Code of Practice) (Harassment) Order, 2002 and S.I. No. 146 of 2000 (Grievance and Disciplinary Procedures) are to be noted.

Dismissal

In the event of a dismissal, the procedures will include the warning stages to apply prior to dismissal and will make reference to verbal and written warnings and to the fact that, depending on the nature of the misconduct/performance, the preliminary stages of the procedures may be bypassed.

- (a) In the event of a summary dismissal, no decision will be taken until this matter has been fully investigated by management.
- (b) The procedures will also state that an employee may be represented, at any stage of the disciplinary procedure, by a colleague or Trade Union official of his/her choice.

An employee may wish to challenge a dismissal to a Rights Commissioner, the Labour Relations Commission, the Labour Court, the Equality Authority or the Employment Appeals Tribunal or may pursue the matter under common law.

**Given under the Official Seal of the
Labour Court this 14th day of
April, 2004.**

**L.S. (Signed) KEVIN DUFFY
CHAIRMAN**

EXPLANATORY NOTE

This note is not part of the Instrument and does not purport to be a legal interpretation.

This Instrument fixes, with effect from 23rd April, 2004, statutory minimum rates of remuneration and statutory conditions of employment of certain workers employed in catering establishments anywhere throughout the State except the areas known until 1st January, 1994 as the County Borough of Dublin and the Borough of Dun Laoghaire. It is made by the Labour Court on the recommendation of the Catering Joint Labour Committee for areas other than the former County Borough of Dublin and the Borough of Dun Laoghaire.