

S.I. NO. 702 OF 2004

**EMPLOYMENT REGULATION ORDER [CATERING JOINT LABOUR
COMMITTEE (FOR 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 26th September, 2003 (S.I. No. 457 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 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 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 November, 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 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 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) **Chef/Cook** - A person who is primarily engaged/employed in both the preparation and cooking of food for service to the public and/or staff, and other duties.
- (b) **Waiting/Barperson** - A person who is employed for the sole purpose of engaging in the service of food at table, the preparation and/or service of alcoholic drinks and/or other beverages.
- (c) **Clerical Person** - A person who is employed for the sole purpose of engaging in clerical, reception and/or cashier duties.
- (d) **General Assistant** - Any person employed in a catering establishment in any position other than those defined as above.
- (e) **Part-time Employee** - A part-time employee means an employee whose normal hours of work are less than the normal hours of work of a comparable employee in relation to him/her.
- (f) **Casual Employee** - A casual employee is a part-time employee who works on a casual basis. Under the Protection of Employees (Part-Time Work) Act 2001, a part-time employee is considered as working, at a particular time, on a casual basis if at that time:-

(i) he or she has been in the continuous service of the employer for a period of less than 13 weeks, and that period of service and any previous period of service by him or her with the employer are not of such a nature as could reasonably be regarded as regular or seasonal employment,

or

(ii) if he or she fulfils, at that time, the conditions specified in an approved collective agreement (as defined in section 11 (5) of the Act) that has effect in relation to him or her, and regards him or her for the purposes of that agreement as working on a casual basis.

2. Statutory minimum rates of remuneration

| | From 23rd November 2004 | From 23rd May 2005 | From 23rd November 2005 | From 23rd May 2006 | From 23rd November 2006 |
|---|-------------------------------|--------------------------|-------------------------------|--------------------------|-------------------------------|
| | Per Week | Per Week | Per Week | Per Week | Per Week |
| (a) <u>Chef /Cook</u> | | | | | |
| 1st Year of training (75% of full rate) | €229.32 | €236.20 | €240.92 | €244.54 | €250.65 |
| 2nd Year of training (80% of full rate) | €244.61 | €251.95 | €256.99 | €260.84 | €267.36 |
| 3rd Year of training (90% of full rate) | €275.18 | €283.44 | €289.11 | €293.45 | €300.78 |
| Trained – full rate | €305.76 | €314.93 | €321.23 | €326.05 | €334.20 |
| (b) <u>Waiter/Waitress/ Barperson</u> | | | | | |
| 1st 8 months of training (75% of full rate) | €12.94 | €19.33 | €23.72 | €27.07 | €32.75 |
| 2nd 8 months of training (80% of full rate) | €27.14 | €33.95 | €38.63 | €42.21 | €48.26 |
| 3rd 8 months of training (90% of full rate) | €55.53 | €63.20 | €68.46 | €72.48 | €79.30 |
| Trained – full rate | €83.92 | €92.44 | €98.29 | €102.76 | €110.33 |
| (c) <u>Clerical Person</u> | | | | | |
| 1st Year | €83.92 | €92.44 | €98.29 | €102.76 | €110.33 |
| 2nd Year and over | €97.44 | €106.36 | €112.49 | €117.18 | €125.11 |
| (d) <u>General Assistant</u> | | | | | |
| 1st Year | €83.92 | €92.44 | €98.29 | €102.76 | €110.33 |
| 2nd Year and over | €97.44 | €106.36 | €112.49 | €117.18 | €125.11 |
| Under 18 years of age (80 % of 1st year rate) | €27.14 | €33.95 | €38.63 | €42.21 | €48.26 |

The above rates are subject to the provisions and terms of the National Minimum Wage Act, 2000.

NOTES: Time spent on relevant training courses will count as service.

- (i) The maximum amount which may be deducted from any worker in respect of board is €2.00 per day where meal/meals are supplied.

- (ii) Incremental movement up the scale for both full time and part time employees will be on the anniversary of the commencement of the employment.

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/her particular category of employment. No part-time or casual worker will be employed for less than 4 hours per shift.

4. Service Charge

Service charge, where levied, will be distributed among all staff excluding all management personnel and trainee managers. Service charge will be paid on the payroll system covering service charges collected in the corresponding pay period, but not less frequently than on a monthly basis.

PART III

STATUTORY CONDITIONS OF EMPLOYMENT

Section I - Normal Working Hours:

The normal working fortnight shall be 78 hours for all full-time employees aged 18 years and over, over a minimum of 8 days and a maximum of 10 days.

Normally, staff may be rostered for a maximum of 10 hours per day, before overtime, but this may be extended to a maximum of 12 hours, with the agreement of the individual employer and employee.

In this industry, it is a common practice for certain employees to work in more than one employment. Where this is the case, there is an obligation on such employees to inform their employers of hours worked in any other employment, in order that the provisions of the Organisation of Working Time Act, 1997 can be implemented.

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) or on work experience (maximum of 40 hours per week). The normal number of hours for young persons on holiday work shall be 70 hours in any fortnight, but must not exceed 35 hours per week, and for young persons on work experience shall be 78 hours in any fortnight, but must not exceed 40 hours per week.

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.

Section II – Holidays / Public Holidays

All employees are entitled to annual leave in accordance with the provisions of the Organisation of Working Time Act, 1997.

Entitlements to public holidays are as follows:-

Christmas Day, St. Stephen's Day, New Year's Day, St. Patrick's Day, Easter Monday, first Monday in May, first Monday in June, first Monday in August and last Monday in October.

Where a worker is required to work on a public holiday or where a public holiday coincides with a rest day, he/she shall be given either -

- (a) a paid day off on that day, or
- (b) a day off in lieu with pay within a month of that day, or
- (c) an additional day with pay added to his/her annual leave, or
- (d) payment for the day equivalent to twice the amount of a full day's pay.

Payment for public holidays will be calculated in accordance with provisions of the Organisation of Working Time Act, 1997.

Part-Time / Temporary / Casual Employees are entitled to payment for Public Holidays if they have worked 40 hours in the five weeks immediately prior to the day before the Public Holiday.

Six weeks' notice of intention to allow annual leave shall be given by employers to their workers.

Where a worker has worked on any public holidays throughout the year, the days off in lieu may be taken consecutively and added to the worker's annual leave.

Section III - Other Conditions of Employment:

1. Overtime

Overtime shall be at the rate of time plus one half for hours worked in excess of the rostered hours on any day or in excess of 78 hours per fortnight.

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 is agreed between the employer and worker.

Full-time and Part-time workers shall be made aware of their rostered duty for each period of their 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.

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/her basic pay, for hours worked during that period.

Overtime for Part-Time / Casual Workers

Part-time and casual workers will be entitled to overtime after 78 hours in any fortnightly pay period. Where part-time or casual workers work on both Sundays in a fortnight, the second Sunday will be paid at the appropriate Sunday overtime rate of double time (whether or not 78 hours have been completed).

Part-time and casual workers will be entitled to overtime on a daily basis after completion of their rostered shift or after 8 hours, whichever is the longer.

2. Sunday Work

- (a) Within the 78- hour fortnight, every second Sunday shall be regarded as a day off. In addition each worker shall be entitled to minimum rest periods as prescribed by legislation.
- (b) All workers rostered to work on Sunday, other than overtime, shall be paid time plus one-third for rostered work.
- (c) Any Part-time / Casual worker normally rostered to work only Saturday / Sunday plus the possibility of a Friday or a Monday in addition shall be paid time plus one third for the Sunday.

3. **Spreadover Duty/Starting/Finishing Time:**

Persons under 18 years of age may not start work before 7:00a.m. unless they are in a formal training programme in the industry and may not work after 10:00p.m. in the evening.

The maximum period for spreadover duty shall not exceed 13 hours in any day. The maximum number of spreadovers in any fortnight shall be five, subject to a minimum break of 3 hours.

4. **Breaks***

Where hours worked are between:

4½ hours and 6 hours - 15 minutes paid break

6 hours and 8 hours - 15 minutes paid and 15 minutes unpaid

in excess of 8 hours - 15 minutes paid and 30 minutes unpaid lunch break.

No worker over the age of 18 shall be required to work continuously for more than 4½ hours without a break of at least 15 minutes, exclusive of main meal break.

(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.

5. **Sick Pay Scheme**

1. The Sick Pay Scheme will be a non-contributory scheme.
2. No payment will be made for the first 3 days of any absence.
3. The employer is to be contacted within 1½ hours of the employee's normal starting time on the first day of absence.

4. A doctor's certificate, signed by a medical practitioner, is required on the third day of absence specifying the nature of the illness, and weekly thereafter.
 5. At the choice of the employer, the sick pay scheme will apply on a calendar year basis, either from 1st January to 31st December or from 1st April to 31st March, with no transfer of benefit from one year to the next. Individual employees will be eligible for benefit under the scheme after 1 years' continuous service.
 6. The Scheme will apply to full-time staff, and part-time staff on a pro rata basis.
 7. Any employee found to be abusing the Sick Pay Scheme will be subject to the full disciplinary procedures up to and including dismissal.
 8. The employer will reserve the right to refer an employee for an assessment by the Company doctor. The employer will meet the cost of the referral.
 9. The Sick Pay Scheme will not cover absences relating to the following:
 - Traffic accident(s)
 - Substance abuse
 - Dangerous sports (i.e. Martial Arts, mountaineering, skiing, parachuting, flying as a hobby, hang-gliding)
 - Injuries sustained while working for another employer.
 10. All staff who qualify will be entitled to 3 weeks basic pay, less social welfare. Pay will be based on the average of the preceding 13 weeks worked for part-time staff. It will be the responsibility of the employee to claim social welfare entitlements while on sick leave.
 11. Payments will only be made when absence is medically certified.
6. **Certification**
Each worker shall be entitled to receive from his/her employer on termination of his/her employment a certificate of service showing the period of his/her employment, and the grade in which he/she has been employed.
7. **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.

8. Day Release Training

Where trainees are following designated apprenticeship training courses which have as a component a day release element, they shall be entitled with pay to attend such courses provided day release attendance is certified. Attendance on a day release programme shall be determined as a day worked for the purpose of calculating weekly working hours and statutory entitlements.

9. Notice of Termination

Except in certain circumstances justifying immediate termination of employment by the employer, employees will be entitled to receive the appropriate period of notice as set out in the Minimum Notice and Terms of Employment Acts 1973-1991.

Section IV

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.

**Given under the Official Seal of the
Labour Court this 9th day of November, 2004.**

L.S.

**(Signed) RAYMOND MCGEE
DEPUTY 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 November, 2004, statutory minimum rates of remuneration and statutory conditions of employment of certain workers employed in catering establishments in 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 the areas known, until 1st January, 1994 as the County Borough of Dublin and Borough of Dun Laoghaire).