



STATUTORY INSTRUMENTS.

S.I. No. 239 of 2007

INDUSTRIAL RELATIONS ACT 1990 (CODE OF PRACTICE FOR
PROTECTING PERSONS EMPLOYED IN OTHER PEOPLE'S HOMES)
(DECLARATION) ORDER 2007

(Prn. A7/1013)

S.I. No. 239 of 2007

INDUSTRIAL RELATIONS ACT 1990 (CODE OF PRACTICE FOR
PROTECTING PERSONS EMPLOYED IN OTHER PEOPLE'S HOMES)
(DECLARATION) ORDER 2007

WHEREAS the Labour Relations Commission has prepared under subsection (1) of section 42 of the Industrial Relations Act 1990 (No. 19 of 1990), a draft code of practice for protecting persons employed in other people's homes;

AND WHEREAS the Labour Relations Commission has complied with subsection (2) of that section and has submitted the draft code of practice to the Minister for Enterprise, Trade and Employment;

NOW THEREFORE I, Tony Killeen, Minister of State at the Department of Enterprise, Trade and Employment, in exercise of the powers conferred on me by subsection (3) of that section, the Labour (Transfer of Departmental Administration and Ministerial Functions) Order 1993 (S.I. No. 18 of 1993) (as adapted by the Enterprise and Employment (Alteration of Name of Department and Title of Minister) Order 1997 (S.I. No. 305 of 1997)), and the Enterprise, Trade and Employment (Delegation of Ministerial Functions) Order 2004 (S.I. No. 809 of 2004), hereby order as follows—

1. This Order may be cited as the Industrial Relations Act 1990 (Code of Practice for Protecting Persons Employed in Other People's Homes) (Declaration) Order 2007.

2. It is declared that the code of practice set out in the Schedule shall be a code of practice for the purposes of the Industrial Relations Act 1990 (No. 19 of 1990).

SCHEDULE

CODE OF PRACTICE FOR PROTECTING PERSONS EMPLOYED IN
OTHER PEOPLE'S HOMES

1. Introduction

1.1 Section 42 of the Industrial Relations Act 1990 provides for the preparation of draft codes of practice by the Labour Relations Commission for submission to the Minister for Enterprise, Trade and Employment.

1.2 It was agreed in Section 23.2 of Part 2 of "Towards 2016 — Ten Year Framework Social Partnership Agreement 2006 — 2015" that the Labour Relations Commission should be asked to develop a code of practice to set out the current employment rights and protections for persons employed in other people's homes and provide for—

- The obligation to provide a written statement of terms and conditions of employment as required under the Terms of Employment

(Information) Acts 1994 and 2001, detailing hours, rates, duties, breaks/leave entitlements, treatment of travel time etc;

- Provisions as regards the safeguarding of privacy;
- The employer will not keep any personal document belonging to an employee;
- The treatment of accommodation and making of any deductions;
- All additional duties will be by prior agreement only and out-of-pocket expenses will be reimbursed promptly;
- The employer will facilitate the employee in the free exercise of personal pursuits; and
- The employer will not restrict the employee's right to trade union membership.

1.3 In preparing this code of practice, the Labour Relations Commission consulted with the representatives of the Social Partners, namely ICTU and IBEC, and, to the maximum extent possible, took account of their views.

2. Definition of “employee”

In this code of practice, an “employee” means a person who is employed in the home of another person, in accordance with the provisions of the Code of Practice for Determining Employment or Self-Employment Status of Individuals.

3. Purposes of the Code

The code seeks to:

- Set out certain employment rights and protections for persons employed in other people's homes; and
- Encourage good practice and compliance with the law concerning the employment of persons in other people's homes; and
- Increase awareness of the application of relevant legislation and codes of practice with regard to the sector to which this code applies.

4. General Principles

This code operates in accordance with the following principles:

- This code is applicable to all employees in other people's homes and to the employers of those employees;
- Employees in other people's homes have an equal entitlement to the employment rights and protections available to any other employee. Employers of those employees are entitled to all available statutory

exemptions. (For example, section 3(2)(b) of the Organisation of Working Time Act 1997 excludes from the provisions of Part 2 of that Act, a person who is “employed by a relative and is a member of that relative’s household, and whose place of employment is a private dwelling house or a farm in or on which he or she and the relative reside”)., and

- This code encourages anti-discrimination practices by the employer and encourages employers to respect employees’ entitlements under the Employment Equality Acts 1998 and 2004 and the Equal Status Acts 2000 to 2004.

5. Provisions of Code

5.1 The employer shall supply to the employee a written statement of terms and conditions of employment, as required under the Terms of Employment (Information) Acts 1994 to 2001, setting out clearly the following—

- Hours of work
- Rates of pay
- List of duties
- Periods of Annual Leave
- Place or places of work
- Commencement date

Details of rest breaks should be included in the written statement of terms and conditions of employment.

Notes:

1. Rest breaks shall be given in accordance with the Organisation of Working Time Act 1997.
2. Hours of Work shall be recorded in accordance with the Organisation of Working Time Act (Records) (Prescribed Form and Exemptions) Regulations 2001 (S.I. 473 of 2001).

5.2.1 The employer shall respect the dignity and privacy of the employee and shall take all steps necessary to safeguard the dignity and privacy of the employee working in the home. Where an employer intends to conduct surveillance of the workplace in the home, a statement to this effect must be included in the statement of terms and conditions of employment specified at point 5.1 above. Searches of the employee’s personal belongings may only be conducted where such permission to search is provided for in the written statement of terms and conditions of employment. Such searches shall be exceptional and conducted in the employee’s presence. The permission to search in accordance with the written statement of terms and conditions of employment does not extend to reading the employee’s personal mail or listening in on personal phone calls.

5.2.2 In the event that the employee lives in the home, the employer shall provide a private secure room with a bed. If employees are required to share a bedroom with fellow employees, this should be clearly agreed in advance.

5.3 The employer will require the employee to carry out the duties specified in the written statement of terms and conditions of employment. Additional duties will only be carried out following clear agreement between the employer and employee, or as already provided for in the written statement of terms and conditions of employment.

5.4 Details regarding the place or places of work and travel to the place or places of work (e.g. to a holiday home of the employer, or in accompanying the employers family on holiday elsewhere, etc.) shall be included in the written statement of terms and conditions of employment. Where an employee accompanies an employer or members of the employers' family on holiday, working time will be calculated in accordance with the Organisation of Working Time Act 1997 and, in those circumstances, time worked and rest breaks/days taken in accordance with that Act shall not be treated as annual leave.

5.5 The employer shall supply to the employee detailed pay slips which set out—

- Payment intervals (weekly, fortnightly or monthly).
- Rate of pay per hour.
- Details of any overtime payments to be paid.
- Details of all PRSI/PAYE deductions.
- Details of any other deductions from pay (which will be made by prior agreement only and in accordance with the Payment of Wages Act 1991).

5.6 Employers should recognise that accidental breakages or damage will happen. Any deductions from the employee's wages shall only be made in accordance with the Payment of Wages Act 1991.

5.7 The employer may make deductions from wages where the employee is provided with meals and/or lives in the place of employment to amounts specified in the National Minimum Wage Act 2000, which are subject to amendment and currently are of the following amounts—

- Full board and lodging — €54.13 per week or €7.73 per day.
- Full board only — €32.14 per week or €4.60 per day.
- Lodgings only — €21.85 per week or €3.14 per day

5.8 The employer shall not withhold any personal documentation belonging to the employee (e.g. passport, visa, identity cards, bank account documentation, etc). For the avoidance of doubt, the employer can retain copies of these documents where such copies are required to ensure compliance with other legislation.

5.9 The employer shall ensure that the employee is promptly reimbursed for all reasonable out-of-pocket expenses incurred during the course of his or her employment (e.g. travel fares, entrance charges, etc.) in connection with his or her employment.

5.10 The employer shall facilitate the employee in the free exercise of personal pursuits outside of the employee's working time as specified in the written statement of terms and conditions of employment.

5.11 The employer shall take all reasonable steps to ensure that the employee is aware of his or her statutory entitlements as an employee.

5.12 In accordance with Irish law, the employer shall not restrict the employee's right to trade union membership consistent with the employee's Constitutional right to join or not to join a trade union.

5.13 Both the employer and the employee will mutually respect each other and the employer will take all reasonable efforts to ensure that the employee's dignity in the workplace is respected and protected.

5.14 Both the employer and the employee should establish, where required by law, that relevant employment permits are held.

6. Further information and advice

6.1 For further information and advice on any aspect of this document please contact:

The Labour Relations Commission
Tom Johnson House, Haddington Road, Dublin 4
Tel: (01) 613 6700 Fax: (01) 613 6701
Web: www.lrc.ie

or

The Director of the National Employment Rights Authority
Davitt House, Adelaide Road, Dublin 2
Tel: (01) 631 3131 Fax: (01) 631 3329
Web: www.entemp.ie

6.2 For further information on the Employment Permits Acts 2003 and 2006 please contact:

Work Permits Section,
Department of Enterprise, Trade and Employment,
Davitt House, Adelaide Road, Dublin 2.
Tel: (01) 631 3333/631 3308 Fax: (01) 631 3268
Web: www.entemp.ie

6.3 For further information on the Employment Equality Acts 1998 and 2004 and the Equal Status Acts 2000 to 2004 please contact:

The Equality Authority,
2 Clonmel Street, Dublin 2.
Tel: (01) 417 3333 Lo Call: 1890 245 545
Web: www.equality.ie

Note: All legislation, both Acts and Statutory Instruments, cited in this Code of Practice are available from www.irishstatutebook.ie or www.entemp.ie



GIVEN under my hand,
18 May 2007

TONY KILLEEN.

Minister of State at the Department of Enterprise, Trade
and Employment.

EXPLANATORY NOTE.

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

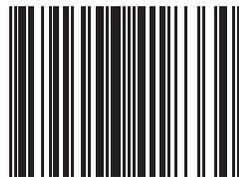
The effect of this Order is to declare that the code of practice set out in the Schedule to this Order is a code of practice for the purposes of the Industrial Relations Act, 1990.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHAN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
51 FAICHE STIABHNA, BAILE ÁTHA CLIATH,
(Teil: 01 - 6476834/35/36/37; Fax: 01 - 6476843)
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