



Labour Relations Commission

Sunday Working in the Retail Trade

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1. INTRODUCTION

1. The Minister for Labour, Trade and Consumer Affairs, requested the Labour Relations Commission, pursuant to Section 35(2) of the Organisation of Working Time Act 1997 and in relation to the Sunday work supplemental provisions of Section 14 of the Act, to prepare a Code of Practice on Sunday Working in the retail trade.
2. The Labour Relations Commission has prepared this Code of Practice on Sunday Working in the Retail Trade in accordance with the provisions of section 35 (2) of the Organisation of Working Time Act 1997. When preparing the Code of Practice the Commission sought submissions from the Irish Business and Employers Confederation, the Irish Congress of Trade Unions, the Union of Retail Bar and Administrative Workers (MANDATE) and the Services Industrial Professional Technical Union.
3. The Commission has taken account of the views expressed by these organisations to the fullest extent possible in preparing this Code.
4. The Code is designed to assist employers, employees and their representatives in observing the 1997 Act as regards Sunday working in the retail trade. It gives guidance, in particular, on arrangements that may be put in place to comply with the supplemental provisions of Section 14 of the Act.
5. While failure on the part of any person to observe the Code will not, in itself, render that person liable to civil or criminal proceedings, the Code shall be admissible in evidence before a Court, the Labour Court or a Rights Commissioner in proceedings under the Organisation of Working Time Act 1997.

2. SUPPLEMENTAL PROVISIONS OF SECTION 14 OF THE ORGANISATION OF WORKING TIME ACT, 1997 – SUNDAY WORK

NOTE

This section of the code gives a general description of some of the supplemental provisions of Section 14 of the Organisation of Working Time Act 1997 and is not a legal interpretation.

1. The terms of the EU Directive on Working Time, (Council Directive 93/104/EC of 23 November 1993), were transposed into Irish law by means of the Organisation of Working Time Act 1997 and Regulations made under the Safety, Health and Welfare at Work Act 1989.
2. Section 14 of the Organisation of Working Time Act 1997 sets out statutory rights for employees in respect of Sunday working. Any employee who is required to work on a Sunday and, his or her having to work on that day has not been taken account of in the determination of pay, shall be compensated as follows:
 - by the payment to the employee of a reasonable allowance having regard to all the circumstances
or
 - by increasing the employee's rate of pay by a reasonable amount having regard to all the circumstances
or

- by granting the employee reasonable paid time off from work having regard to all the circumstances or
- by a combination of two or more of the above means.

3. GENERAL PRINCIPLES OF COMPENSATORY ARRANGEMENTS FOR SUNDAY WORKING IN THE RETAIL TRADE

GENERAL

1. The retail trade consists of many varied groups of businesses such as drapery, grocery, hardware or fast food, operating in diverse business environments. The purpose of this Code is to ensure that best practices are operated by all employers for those employees who service that sector of industry through Sunday working. Sunday hours of work and rostering arrangements have a significant impact on the quality of life of workers as well as being important to the efficient operation of the enterprise. Therefore, they should be subject to discussion and consultation between the employer and the relevant trade union(s) representing employees or between the employer and the employees who are affected by Sunday trading, in circumstances where employees are not unionised.
2. The following is a general guide to all employers and their employees on the type of compensatory arrangements that should apply for Sunday working. While the compensatory arrangements listed are set out for general guidance only, employers may provide enhanced compensatory arrangements to suit particular business environments. Minimum compensatory requirements are set out at Section 14 of the Organisation of Working Time Act 1997.

3. Guidelines on Compensatory Arrangements for Sunday Working

- 3.1 Where a collective agreement of the type implied in Section 14 of the Organisation of Working Time Act 1997 exists between an employer and a trade union(s) representing employees or between an employer and employees who are not unionised, this should not be altered, except through the standard negotiating mechanisms.
- 3.2 In the absence of a collective agreement, best practice should be set by reference to compensation arrangements provided for in a collective agreement applying to comparable employees in the (retail) sector.
- 3.3 All new agreements being entered into should be negotiated between the employer and the relevant trade union(s) representing employees, based on a consensus approach. In circumstances where employees are not unionised the agreement should be negotiated between the employer and the employees who are affected by Sunday trading. Agreements should take account of the following:
 - In accordance with provisions of the Organisation of Working Time Act 1997 a premium payment will apply to Sunday working. Section 14 of the Act specifies the means by which the premium should be granted. The nature and value of this premium rate should be negotiated and agreed between the employer and the trade union(s) representing employees or between the employer and the employees who are affected by Sunday trading, in circumstances where employees are not unionised.

- Existing employees should have the option to volunteer to opt into working patterns, which include Sundays on a rota basis and form part of a regular working week (i.e. being required to work no more than 5 days out of 7). Newly recruited employees may be contracted to work Sundays as part of a regular rostered working pattern.
- Employees who have a minimum of two years' service on a Sunday working contract should have the opportunity to seek to opt out of Sunday working, for urgent family or personal reasons, giving adequate notice to the employer.
- Meal breaks on Sundays should be standardised in line with the other working days of the week.
- All employees should have the opportunity of volunteering to work on the peak Sunday trading days prior to Christmas, in addition to their normal working week. In these circumstances length of service will not be the overriding criteria for selection for Sunday working.

NOTE

The Labour Relations Commission will provide assistance to employers and trade union(s) representing employees and to employers and their employees who are not unionised, in the negotiation of collective agreements on compensatory arrangements of the kind specified in Section 14 of the Organisation of Working Act 1997.

Requests for such assistance should be forwarded in writing to the Labour Relations Commission, Tom Johnson House, Haddington Road, Dublin 4, telephone 6136700 (01 area) and 1890 220227 (outside 01 area), fax (01) 6136701.

4. COMPLAINTS PROCEDURE

1. The Organisation of Working Time Act 1997 sets out a complaints procedure for dealing with the various complaints that may arise under the Act. While the procedure deals with general complaints concerning various entitlements, for the purposes of this Code the procedure concerns itself with complaints about Sunday working in the retail sector.

Who can make a complaint?

2. An employee or any trade union of which the employee is a member, with the consent of the employee, may present a complaint. The Minister for Labour, Trade and Consumer Affairs may also present a complaint if it is apparent that an employer is not complying with a provision and, where the employee/trade union has not done so and, the Minister is of the opinion that the circumstances are such as to make it unreasonable to expect the employee/trade union to present such a complaint.

How is a complaint presented and processed?

3. Complaints arising under section 14 of the 1997 Act, should be presented in the first instance to a Rights Commissioner. A complaint must be made within six months of the date of the alleged contravention by the employer. However, a complaint which is presented not later than twelve months after the six months time limit may be investigated if the Rights Commissioner is satisfied that the delay was due to reasonable cause. A complaint should be in writing and should contain the requisite particulars.

4. The Rights Commissioner must give the employer a copy of the complaint. The Rights Commissioner must hear the parties and allow relevant evidence to be presented. The investigation of a complaint will be held in private. The Rights Commissioner must furnish the Labour Court with a copy of each decision given under the 1997 Act.
5. The Rights Commissioner in making a decision shall do one or more of the following:
 - a) declare that the complaint was, or, as the case may be, was not well founded
 - b) require the employer to comply with the relevant provision(s)
 - c) require the employer to pay compensation of such amount (if any) as is just and equitable having regard to all the circumstances, up to a maximum of two years' remuneration.

NOTE

Queries relating to complaints and procedures should be forwarded in writing to the Rights Commissioner Service, Labour Relations Commission, Tom Johnson House, Haddington Road, Dublin 4, telephone 6136700 (01 area) and 1890 220227 (outside 01 area), fax (01) 6136701.

5. APPEALS

1. Either party may appeal a decision of a Rights Commissioner to the Labour Court. The appeal must be made within 6 weeks of the date on which the decision was communicated to the party. The notice of appeal should be submitted to the Labour Court in writing.
2. The Labour Court must give a copy of the notice of appeal to the other party. The Labour Court shall give the parties an opportunity to be heard and to present relevant evidence to it. It will make a determination in writing affirming, varying or setting aside the decision. The Court must communicate that determination to the parties.

NOTE

The procedure on appeals is laid down by the Labour Court. Details of these procedures can be obtained from the Labour Court, Tom Johnson House, Haddington Road, Dublin 4, telephone 6136666 (01 area) and 1890 220228 (outside 01 area)

6. ENFORCEMENT OF DECISIONS OF THE RIGHTS COMMISSIONER/ DETERMINATIONS OF THE LABOUR COURT

1. An employee may bring a complaint to the Labour Court where an employer has not implemented a decision of the Rights Commissioner under the Act or has not appealed a decision within the requisite time. The Labour Court shall make a determination to the like effect as the original decision without hearing the employer concerned. The complaint must be brought by the employee not later than six weeks after the time limit for making an appeal has expired. Complaints of the non-implementation of Rights Commissioners' decisions under the Act should be submitted to the Labour Court. The Labour Court shall publish particulars of its determinations in such manner as it thinks fit.

2. The Minister, at the request of the Labour Court, may refer a question of law arising in proceedings before it, concerning appeals from the enforcement of recommendations of a Rights Commissioner, for determination by the High Court. The determination of the High Court shall be final and conclusive.
3. A party to proceedings may appeal to the High Court from a determination of the Labour Court on a point of law. The determination of the High Court shall be final and conclusive.
4. Where a determination of the Labour Court has not been implemented, within six weeks from the date on which the determination is communicated to the parties, the Circuit Court, on application to it, by an employee, trade union or the Minister, shall, without hearing the employer or any evidence, make an order directing the employer to carry out the determination in accordance with its terms.
5. The Circuit Court, if it deems it appropriate to do so, may direct the employer to pay interest on the compensation in respect of any period commencing 6 weeks following the communication of the Labour Court's determination to the parties and ending on the date of the order.
6. The application to the Circuit Court will be in the Circuit where the employer usually resides or carries out the business.

An Order (S.I. No. 444 of 1998) declaring this code to be a Code of Practice for the purposes of section 14 of the Organisation of Working Time Act 1997 was made by Tom Kitt, Minister for Labour, Trade and Consumer Affairs on 19th November 1998.