MANAGING BETTER SERIES

03 Human Resources

pobal

government supporting communities

What is this guide about?

This is the third guide of the Pobal Managing Better Series. The guides have been written to assist board/committee members and management of community, voluntary and not-for-profit organisations in achieving high standards of decision-making, accountability and transparency, both in the context of the communities they seek to support, and in the context of meeting statutory and legal requirements. In other words, the guides seek to help organisations to operate effectively and achieve good practice.

This guide relates to human resource management.

The aim of this guide is to assist community, voluntary and not-for-profit organisations with the development and implementation of effective HR policies and procedures that reflect good practice.

How should I use this guide?

The guide is divided into 4 main sections that cover relevant areas associated with:

- Starting the employment relationship
- Employment conditions, policies and procedures
- Ending the employment relationship
- Key employment legislation

The guide may be read from beginning to end, or you may wish to dip in and out of relevant sections. Each organisation will need to interpret and apply the principles discussed in this guide according to its particular needs and circumstances. Further guides in this series will help with other aspects of management including good governance (volume 1) and financial management (volume 2). All guides and related support material are available to download from our website at **www.pobal.ie**

Preface

In the course of my job as CEO of Pobal, I meet a lot of board members from the community, voluntary and not-for-profit sector. One of the topics that is often raised with me is the challenge associated with ensuring good organisational governance.

There is little doubt that the regulatory environment in Ireland relating to corporate governance in the community, voluntary and not-for-profit sector has changed significantly in recent years, with a focus on greater transparency and accountability for the sector. Strong and effective corporate governance arrangements are key considerations when funders allocate resources within the sector.

While the focus on enhanced accountability and transparency in the sector is to be welcomed, there is also a need to recognise that those who volunteer their time as board members, and those who work in the sector, need guidance and support so that boards and management committees understand their statutory obligations and achieve good practice.

Pobal's 'Managing Better Series' seeks to support boards and management within the community, voluntary and not-for-profit sectors to understand the wider legal environment around good governance, while also offering guidance in how to effect good governance in practice.

Originally published in 2011, the series of three guides have been updated in 2018 to reflect recent changes in the governance landscape. We, in Pobal, understand the value of the community, voluntary and not-for-profit sector, and the contribution that the sector makes to promoting social inclusion, equality and reconciliation across the island of Ireland. Pobal is committed to supporting the sector to thrive, and we hope that this series of guides will contribute to the effective running of your organisation.

Denis Leamy
CEO, Pobal, May 2018

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Introduction

Human Resource Management (HRM) is the function within an organisation which typically focuses on the recruitment, management and development of staff.

HRM can be performed by line managers or, where organisations are much larger in scale, by a dedicated HR professional(s). HR typically deals with all aspects of the employment relationship between the employee and their employer, from commencement to cessation, and focuses on ensuring compliance with the many and varied pieces of both domestic and EU legislation which govern the employment relationship.

Clear and consistently applied HR practices enable the organisation's staff to contribute effectively and productively to the overall direction of the organisation and to the accomplishment of its goals and strategic objectives. It also ensures that staff are resourced fully and provided with a safe, supportive and fair place of work.

This guide includes information on a range of key areas of the employment relationship which are broken down under the following headings:

- Starting the employment relationship
- During employment
- Ending the employment relationship

01 Starting the Employment Relationship

1.1 Recruitment and Selection

This section aims to outline how best the employer can approach this task. However, prior to commencing the recruitment and selection process, it is worthwhile taking a look at the legislative framework which governs this area. This will assist employers in approaching the process in a manner which is both fair and legal.

Key Recruitment and Selection Legislation

The Employment Equality Acts 1998-2015 legislate against discrimination in a wide range of employment and employment-related areas. This covers the key HR practices of recruitment and promotion of staff. The legislation defines discrimination as treating one person in a less favourable way than another person based on any one or a combination of the nine equality grounds.

The nine equality grounds are:

- **Gender:** this means man, woman or transsexual
- **Civil status:** includes single, married, separated, divorced or widowed people, civil partners and former civil partners
- **Family status:** this refers to the parent of a person under 18 years or the resident primary carer or parent of a person with a disability
- **Sexual orientation:** includes gay, lesbian, bisexual and heterosexual
- **Religion:** means religious belief, background, outlook or none
- **Age:** this does not apply to a person aged under 16
- **Disability:** includes people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions
- **Race:** includes race, skin colour, nationality or ethnic origin
- Membership of the **Traveller community**

The Freedom of Information Act, 2003 to 2014 establishes the following statutory rights:

- A legal right for each person to access information held by public bodies and government departments.
- A legal right for each person to have official information relating to himself/herself amended where it is incomplete, incorrect or misleading.
- A legal right to obtain reasons for decisions affecting himself/herself.

The Freedom of Information Act extends to records held by groups relating to any contract that they may have with any Government Department or any public body which fall under this legislation. Individuals who are employed under funding from these departments/bodies may therefore make a request to the department/body for access to their recruitment records in accordance with the terms of the Act. Groups will be required to make these records available to the department/body for forwarding to the requester in accordance with the provisions of the Act.

Publication scheme

Section 8 of the Act requires FOI bodies to prepare a publication scheme concerning the publication of information by the body in conformity with a model publication scheme and guidelines. This provides for the publication of information on an FOI body's website. An FOI body is required to:

- Publish information to assist members of the public in their understanding of the body and its functions.
- Publish the information it holds grouped under the information headings set out in the model publication scheme.
- Explain the procedures to get access to information or to establish what information the body holds.

The requirement to publish an FOI body's publication scheme came into effect on 14th April 2016.

The Employment Permits Act 2003 to 2014 governs the employment of non-European Economic Area (EEA) nationals and contains restrictions on the employment of nationals from certain member states. Employers should make themselves aware of the general provisions under this legislation so they are clear as to their rights to employ non-EEA nationals, before they consider the employment of a non-EEA national. Further information on employment permits can be found at www.dbei.gov.ie

Recruitment and Selection Process

At the core of any recruitment and selection process is the requirement to match an individual with a particular set of job requirements which the organisation has. Put simply, the process is about securing the right fit between an employee and a position. It is critical that this is approached in a logical and systematic manner.

The key pieces of recruitment and selection legislation impact on the following areas of the recruitment and selection process:

Step 1: Drafting of the job description/person specification

Step 2: Application form

Step 3: Advertising the position

Step 4: Selection procedure

a. shortlisting of candidates for interview

b. interviews and selection

Step 5: Record management

Step 6: Referee reports and Garda vetting (if necessary)

1.2 Contract/Statement of Employment

The contract/statement of employment is one of the most important documents that an employer can ever issue. Where a contract/statement is clear and unambiguous it can be relied upon in the event of a legal dispute. Where it is poorly or vaguely written this can leave the employer in a position where they cannot rely on the contract/statement to defend a legal dispute. A clear and well written contract/statement of employment is the foundation of the employment relationship and it is worthwhile taking the time to prepare one that is appropriate to the requirements of the business and applying it consistently.

Under the Terms of Employment (Information) Acts 1994 to 2001 all new employees must be provided with a written statement of the term and conditions relating to their employment by no later than two months after the commencement of their employment.

Employers should note that there are a number of statutory requirements regarding the information which must be included in the contract/statement of employment. These include:

- The full names of the employer and the employee
- the address of the employer
- The place of work, or where there is no main place of work, a statement indicating that an employee is required or permitted to work at various places
- Job title or nature of the work
- Date of commencement of employment
- If the contract is temporary, the expected duration of employment
- If the contract is for a fixed term, the date on which the contract expires
- the rate of pay or method of calculating pay
- Whether pay is weekly, monthly or otherwise
- Terms or conditions relating to hours of work, including overtime
- Terms or conditions relating to paid leave (other than paid sick leave)
- Any terms or conditions relating to incapacity for work due to sickness or injury
- Any terms or conditions relating to pensions and pension schemes
- Periods of notice or method for determining periods of notice
- A reference to any collective agreements which affect the terms of employment

It is considered best practice to also reference the following:

- Probationary period
- Lay off/redundancy/short time working
- Confidentiality
- Grievance procedure
- Disciplinary procedure
- Harassment, sexual harassment and bullying policy
- Internet and email policy
- Safety statement

While the statement of these terms must be signed and dated by the employer, there is no requirement for the employee to sign it. The employer must keep a copy during the period of the employee's employment and for at least a year after it ceases.

There are typically two different types of contracts of employment that apply in the employment relationship:

- Permanent contracts, also known as indefinite-term contracts
- Fixed term and specific purpose contracts.

Employers should be mindful of restrictions surrounding the extension of fixed term contracts. If an employee has had 2 or more fixed term contracts, the combined duration of the contracts cannot exceed 4 years. After this, if the employer wishes the employment to continue, it must be on the basis of offering a contract of indefinite duration unless there are clear and objective grounds justifying the renewal of a contract of employment for another fixed-term. Employers should note that the Courts interpret this provision strictly and financial reasons alone would be insufficient grounds upon which to rely upon.

Variations to Contracts

Employers may seek to change terms and conditions of an employment contract. This can generally be achieved in one of two ways:

a. Through prior consultation and agreement with the employee by written consent.

b. Through conduct i.e. although agreement may not have been sought, acceptance is implied by them complying with the new terms over a period of time.

It should be noted that changes to fundamental clauses of employment contracts (e.g. pay, hours of work, annual leave etc. should always be approached in the manner outlined at a) above as these are fundamental clauses which, if changed unilaterally, could leave the employer exposed to potential legal action.

Temporary agency workers

Employers engaging temporary agency workers should be aware that The Protection of Employees (Temporary Agency Work) Act 2012 entitles all agency workers to the same basic working and employment conditions as a company employee engaged in similar work for example pay, working hours and annual leave. For further guidance in this area, please see the guidance document on the Act on the Department of Jobs, Enterprise and Innovation website. www.dbei.gov.ie

1.3 Personnel Records

Employers should hold confidential and separate personnel records for each of their employees and these should be kept in general adherence to the principles of confidentiality and in accordance with the Data Protection Acts 1988 and 2003, and the General Data Protection Regulation (GDPR).

This legislation ensures the privacy rights of individuals are safeguarded in relation to the processing of their personal data. It also confers rights on individuals as well as placing responsibilities on those persons processing personal data. It defines personal data as “data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller.”

As personnel records will by their nature contain personal data, the security of personal records (both automated and manual) is vitally important, with access designated only to authorised personnel i.e. the Data Controller and the Data Processors. The authorised person must abide by the following rules of data protection with regard to the information held in personnel records:

- Obtain and process information fairly
- Keep it only for one or more specified, explicit and lawful purposes
- Use and disclose it only in ways compatible with these purposes
- Keep it safe and secure
- Keep it accurate, complete and up-to-date
- Ensure that it is adequate, relevant and not excessive
- Retain it for no longer than is necessary for the purpose or purposes
- Give a copy of his/her personal data to an individual, on request

Employees have a right to access any data in which they are named and requests for access must be made in writing (email is acceptable). Under this legislation they also have the right to have any inaccurate information rectified or erased and the right to complain to the Data Protection Commissioner. A guide for Data Controllers can be found on the website for the Data Protection Commissioner www.dataprotection.ie.

The General Data Protection Regulation (GDPR) will come into force in May 2018 and will replace the current data protection framework. The GDPR is designed to emphasise transparency, security and accountability by data controllers. The rules for dealing with subject access requests will change under GDPR. In most cases you will not be able to charge for processing an access request. In addition, the timescales from processing access requests will significantly shorten. Further guidance on preparing for the GDPR is contained in Volume 1 of the Managing Better series of guides on Good Governance. Further information on the GDPR is available on the website for the Data Protection Commissioner www.dataprotection.ie and www.gdprandyou.ie

02 During Employment

2.1 Induction

Induction is a very important part of any new employee's integration into your organisation. As well as helping to welcome the new employee, it is also an enabling tool to ensure that he/she understands the basic company procedures and rules. All organisations should have an agreed process of induction for new employees which should be carried out by relevant, competent staff members. It is advisable to have an induction checklist which could include the following:

Induction checklist

- Introduction to the staff, in particular their line manager and colleagues
- A tour of the premises
- Safety and first aid information including the safety statement and fire evacuation procedure
- A more detailed introduction to their new post, expanding on the job description
- Explanation of terms and conditions of employment
- Explanation of the organisation's policies and procedures
- Information about the organisation e.g. structure, mission statement, strategic plans
- A "hand over" from the person departing the job, if appropriate
- Assign the person to a "buddy" who will be of support and guidance to them in the early days/weeks of employment
- Regular review meetings with employee to 'check in' on progress

Induction should ideally be prioritised and carried out during the early period of employment with the commencement and completion of the process ideally being formally documented. It should be borne in mind that induction is a process, not an event, and it may be appropriate to spread the induction over a series of weeks or indeed months depending on the complexity of the particular job.

2.2 Staff Handbook

It is recommended that all HR policies and procedures which apply in an organisation are given to staff at the outset of their employment. They should also be circulated to all staff where revisions are made due to changes in legislation or good employment practice. Many organisations do this through a traditional staff handbook, though in recent years the trend has been towards the use of electronic methods such as bulletin boards, intranets etc. Whichever method is used it is vital that staff closely familiarise themselves with the content and are encouraged to seek any further clarification on any matter from their line manager in the first instance, or in larger organisations from their HR personnel.

2.3 Equal Opportunities

As an employer, you have a responsibility to ensure that your workplace promotes equal access, opportunity and participation in employment and to eliminate all forms of discrimination, particularly as defined under the Employment Equality Acts 1998 - 2015.

Equality Grounds

The *Employment Equality Acts, 1998-2015* prohibit discrimination on the same nine grounds as listed in section 1.1.

Definitions of Discrimination

Direct discrimination is defined as the treatment of a person in a less favourable way than another person is, has been or would be treated in a comparable situation because they fall into one of the nine grounds listed within the scope of the legislation.

Indirect discrimination is defined as occurring where an apparently neutral provision puts a person, who is a member of one of the nine groups, at a particular disadvantage due to being a member of that group, unless the provision can be objectively justified by a legitimate aim and the means of the aim are appropriate and necessary.

Discrimination by association occurs where a person has been treated less favourably by their association with another person, and similar treatment towards the other person would be considered discrimination.

Dignity in the Workplace

The Employment Equality Acts, 1998–2015 also deals with the prevention of harassment and sexual harassment in the workplace. The Safety Health and Welfare at Work Act, 2005 requires employers to protect the welfare of employees and the Health and Safety Authority is the state agency with responsibility for ensuring the promotion of a positive working environment.

Employers should be aware of various codes of practice relating to the areas of harassment, sexual harassment and bullying which have quasi-legal status. These are:

- Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work - Safety, Health & Welfare at Work Act, 2005
- Code of Practice detailing Procedures for Addressing Bullying in the Workplace - Industrial Relations Act 1990
- Employment Equality Act 2015 (Code of Practice) (Harassment) Order 2012 (SI No 208 of 2012)

All employees have the right to be treated equally and respected for their individuality and diversity. Through the promotion of equality for all employees, a positive work environment can be created ensuring the individual's right to dignity in the workplace is preserved.

It is therefore strongly recommended that employers draft and implement company policies in relation to preventing harassment, sexual harassment and bullying in accordance with the provisions of the codes above.

2.4 Pay and Benefits

Pay is defined as an employee's pay before any deductions are made by the employer. It includes terms such as salary, wages, bonus, overtime pay, holiday pay and allowances.

Payment of Wages

The Payment of Wages Act, 1991 is the principle legislation governing this area. Pay is a core and fundamental contractual term and the rate of pay should be included in the contract/statement of employment. Where incremental progression forms part of the contractual arrangement information on this should also be provided to the employee for their records. Where increments apply, the arrangements for qualifying for incremental progression should be clearly stated e.g. dependant on satisfactory performance. Details of the pay scales and other conditions relating to staff grades should be made available upon request to encourage a climate of openness.

Employees are legally entitled to receive written information about their wages and any deductions made from them under the Payment of Wages Act, 1991. This is typically done through the provision of a payslip. Payslips are often distributed by the financial administrator or payroll department on the relevant pay date in line with statutory requirements.

Travel Expenses and Subsistence

It is the policy of many organisations to reimburse staff for legitimate business expenses incurred in the performance of their duties within a reasonable time frame from the date they are claimed. Where staff are required to travel on official business they are usually paid the travel and subsistence rates that have been approved. A mileage allowance can be payable to an employee when they use their car for business purposes.

Policies in this area should be given to employees in advance so they are clear as to how the arrangements apply. The policies should also be clear as to how a claim can be made and who should authorise the claim. They should also advise that staff members are personally responsible for the payment of any speeding fines, parking tickets, clamping fees etc. that may be incurred on approved company business.

Please refer to section 6.2 of Managing Better Volume 2 Financial Management for further information.

Pension

Many organisations have put in place pension schemes on a voluntary basis which are established in accordance with statutory provisions. All employers are legally required to provide their employees with access to an occupational pension scheme or a Personal Retirement Savings Account (PRSA).

Changes to the State pension do occur periodically. To keep up to date with changes to the State pension visit www.welfare.ie

Further information on pensions and PRSAs is available from the Pensions Authority website www.pensionsauthority.ie. The Pensions Authority is the regulatory body for occupational pensions. All occupational pension schemes are obliged to register with the Pensions Board.

2.5 Staff Attendance Records

Employers should note that t*he Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations 2001* requires all employers to keep the following detailed records of their employees.

- Start and finishing times
- Hours worked each day and each week
- All leave granted.

This legislation is part of the Organisation of Working Time Act, 1997. The employer must keep these records for a period of at least three years. The retention period in the case of some types of leave is longer e.g. parental leave records must be kept for at least eight years. For further information on retention periods refer to the Data Protection Commissioner www.dataprotection.ie.

2.6 Probation

A time limited probationary period is strongly advisable for any new or promoted employee. It allows for a period of time at the beginning of the employment for the employer to assess the employee's suitability for the post. It also provides the employee with the time to ensure the position is suitable for them.

The probationary process itself should be operated in a fair and structured manner, with scheduled reviews so as to allow for the assessment of the employee's performance in sufficient time before the probationary period elapses. It is considered good practice to document these reviews.

Probationary periods generally vary from three months to a maximum period of one year, depending on various factors such as the type and duration of the employment contract. Employers should reserve the right to extend the probationary period provided the extension does not bring the entire probationary period beyond 12 months. Extensions should only be on the grounds of a failure to reach an appropriate standard of work and conduct.

A probationary period should be specifically provided for in the contract/statement of employment. The contract/statement should also provide for the termination of employment within the probationary period. Employers should be mindful that the probationary period does not affect an employee's rights to notice, be that statutory or contractual.

The Unfair Dismissals Acts 1997–2007 will not apply to the dismissal of an employee during a period at the beginning of employment when he/she is on probation or undergoing training provided that:

- The contract of employment is in writing
- The duration of probation or training is one year or less and is specified in the contract.

2.7 Job sharing/Part-time working

Job sharing is an arrangement whereby two employees voluntarily share the responsibilities of one full time position. The pay and benefits are shared in proportion to the hours each works.

Part time working is slightly different. This is where an employee has sole responsibility for a position but their normal working hours are less than a comparable full-time worker. Again pay and benefits are applied on a pro rata basis based on the hours worked.

Both job sharing and part time working can provide a way to assist employees in balancing their work and personal responsibilities and can form part of a company's equal opportunities policy. Employers seeking to introduce either a job sharing or part time working scheme should formalise policies outlining the operation of the schemes and consider the full implications of any job sharing/part time working requests carefully.

It is important to note that The Protection of Employees (Part-Time Work) Act 2001 ensures that job sharers/part time employees cannot be treated any less favourably than a comparable full time employee regarding conditions of employment. It also ensures that employee protection legislation applies to a part time employee/job sharer in the manner as it already applies to a full time employee.

Further details on improving access to part time working/job sharing can be found in the Code of Practice on Access to Part-time Working from the Workplace Relations Commission www.workplacerelations.ie

2.8 Leave

This section explains in summary format the various leave arrangements that can typically be availed of under the contract/statement of employment.

Annual Leave

All employees are entitled to annual leave. The entitlement to annual leave (holidays from work) is set out in the Organisation of Working Time Act, 1997. This entitlement should also be specified in the contract/statement of employment. Full time employees are entitled to a basic minimum paid leave entitlement of four weeks per annum although in many instances employees' contracts can give them greater rights. Part time employees are entitled to a pro-rated entitlement.

The employer decides when annual leave may be taken, but this is subject to a number of conditions including family responsibilities, opportunities for rest, recreation, etc. Each year's entitlement should ordinarily be taken within the leave year or if agreed, within six months of the end of that year. Carryover of annual leave is a matter for agreement between the employee and the employer.

Calculating annual leave entitlements

There are three typical ways of calculating the annual leave entitlement:

- Where an employee works at least 1,365 hours in the leave year they are entitled to the maximum of 4 weeks' annual leave, unless their employment ceases during the leave year.
- One third of a working week can accrue for each calendar month in which the employee has worked at least 117 hours.
- 8% of the hours worked in the leave year, subject to a maximum of four weeks.

An employee may use whichever of these methods gives them the greater entitlement. In general, annual leave for part time workers is calculated using the third method (8% of hours worked). An employee who has worked for at least eight months is entitled to an unbroken period of two weeks annual leave.

Annual leave is not affected by other statutory leave e.g. time spent on maternity leave, adoptive leave, parental leave, force majeure leave and the first 13 weeks of Carer's Leave.

Sick Leave

There is generally no right under Irish employment law for an employee to be paid while incapacitated from work due to sickness or injury. It is at the discretion of the employer to formulate their own policy on sick pay/leave. However, most employers in practice operate some form of sick pay scheme. Where these exist the Terms of Employment (Information) Act, 1994 and 2014 require that they are outlined in the contract/statement of employment.

Where there is no entitlement to paid sick leave, employees may apply for illness benefit from the Department of Employment Affairs and Social Protection though this entitlement depends on having sufficient social insurance contributions.

Where an entitlement to sick pay does exist it is prudent to specify clear rules covering entitlements, notification arrangements, medical certificates, possible requirement to attend a company nominated doctor and arrangements for return to work in a formal sick leave policy. Any entitlement to sick pay should always be reduced to reflect the value of Illness Benefit which may be paid by the Department of Employment Affairs and Social Protection.

Sick leave and annual leave

If an employee is ill during a period of annual leave and has a medical certificate for those days, these sick days will not be counted as annual leave days. Since 1 August 2015, employees will accumulate statutory annual leave entitlement during a period of certified sick leave. Employees on long-term sick leave can retain annual leave they could not take due to illness for up to 15 months after the end of the year in which it is accrued. Employees who leave their employment within 15 months of the end of the year in which this annual leave was accrued, are entitled to payment in lieu of this leave which was untaken due to illness.

Maternity Leave

The granting of maternity leave is subject to certain statutory notification requirements. All female staff regardless of their length of service are eligible for a minimum of 26 consecutive weeks maternity leave in accordance with the Maternity Protection (Amendment) Act, 2004. Of these 26 weeks a minimum of two weeks must be taken prior to confinement and a minimum of four weeks must be taken after confinement. Immediately following maternity leave the staff member may on application be allowed up to 16 consecutive weeks additional maternity leave without pay.

For employees on fixed term contracts, if the fixed term contract expires during the period of maternity leave, the rights under the legislation also expire on that date.

There is generally no right under Irish employment law for an employee to be paid while on maternity leave and it is at the discretion of the employer to formulate their own policy on payment during maternity leave.

Information on maternity benefits can be obtained from the Department of Employment Affairs and Social Protection at www.welfare.ie

Paternity Leave

With effect from 1 September 2016, new parents (other than the mother of the child) are entitled to paternity leave from employment or self-employment following birth or adoption of a child. The Paternity Leave and Benefit Act 2016 provides for statutory paternity leave of 2 weeks. The provisions apply to births and adoptions on or after 1 September 2016. You can start paternity leave at any time within the first 6 months following the birth or adoption placement.

Under the Act, a "relevant parent" for the purposes of paternity leave entitlement includes:

- The father of the child
- The spouse, civil partner or cohabitant of the mother of the child
- The parent of a donor-conceived child

In the case of an adopted child, the relevant parent includes:

- The nominated parent in the case of a married same-sex couple or
- The spouse, civil partner or cohabitant of the adopting mother or sole male adopter

The entitlement to two weeks' paternity leave from employment extends to all employees (including casual workers), regardless of how long you have been working for the organisation or the number of hours worked per week. If more than one child is born or adopted at the same time, for example, twins, you are only entitled to a single period of two weeks' paternity leave.

Adoptive leave

Adoptive leave of 24 consecutive weeks followed by up to 16 weeks additional unpaid adoptive leave may be granted, on the same basis as maternity leave (and in accordance with the Adoptive Leave Acts, 1995- 2005). This covers staff who are:

- Adopting mothers
- Sole male adopters
- Adopting fathers, in specified circumstances.

Application for adoptive leave should be made at the stage where notice of acceptance is received by the relevant Adoption Society. The leave commences as soon as the child is placed with the adoptive parents.

Parental Leave

The Parental Leave Acts, 1998 and 2006 entitles parents (and those who may be in loco parentis) to take unpaid parental leave from their employment for the purpose of taking care of their children. Parental leave must be used only to take care of the child concerned and where the parental leave is taken and used for another purpose the employer is entitled to cancel the leave.

Parental leave can be taken in respect of a child up to eight years of age. If a child was adopted between the ages of six and eight, leave in respect of that child may be taken up to two years after the date of the adoption order. In the case of a child with a disability, leave may be taken up to 16 years of age. Parental leave entitles parents to 18 working weeks leave for each qualifying child. The entitlement is exclusive of annual leave, maternity leave, adoptive leave or sick leave. The 18 weeks may be taken in one continuous period or, by agreement, in separate blocks or by working reduced hours.

Employers must keep records of all parental leave taken by their employees. These records must include the period of employment of each employee and the dates and times of the leave taken. Employers must keep these records for 8 years.

Legislation protects parents who take parental leave from unfair dismissal.

Force Majeure Leave

The Parental Leave Acts, 1998 and 2006, give Irish employees a limited right to paid leave from work in times of family crisis which is known as force majeure leave. This type of leave can arise where for urgent family reasons the immediate presence of the employee at the place where a close family member person is based, is indispensable as a result of an injury or illness to that family member. The maximum amount of leave is three days in any twelve month period or five days in a thirty six month period.

Force majeure leave may be taken in respect of a number of specified categories of person:

- A child or adoptive child of the employee
- The spouse of the employee, or a person with whom the employee is living as husband or wife
- A person to whom the employee is in loco parentis
- A brother or sister of the employee
- A parent or grandparent of the employee
- Persons in a relationship of domestic dependency, including same-sex partners.

Further information on force majeure leave is available from the Workplace Relations Commission at www.workplacerelations.ie

Carer's Leave

Employees who are employed for a period of more than 12 continuous months may be entitled to avail of Carer's Leave. The purpose of Carer's Leave is to permit a person a minimum of 13 weeks up to a maximum 104 weeks unpaid leave to look after a seriously ill family member who needs constant care and attention. If carer's leave is not taken in one continuous period, there must be a gap of at least 6 weeks between the periods of carer's leave. Carer's Leave is granted subject to a number of statutory notification requirements (to both the employer and the Department of Employment Affairs and Social Protection).

Jury Duty

Every Irish or British citizen living in Ireland from the age of 18 who is on the Register of Dáil Electors is eligible for jury service. Where an employee has been officially summoned to attend for jury service they are entitled to paid time off from work to attend. Employees must provide written notification of the requirement to attend at Court without delay in the event that they receive a summons. They must also supply an attendance certificate from the Court which evidences the dates and times of their jury service.

Further information on the various types of leave that an employee may be entitled to can be obtained from the Workplace Relations Commission at www.workplacerelations.ie

2.9 Industrial Relations

Industrial relations refer to the process of communication and co-operation between employers and employees in the workplace. It includes interaction concerning pay and working conditions, disputes and their resolution and the process of collective bargaining.

Trade Union Representation

An employee's right to join a trade union is set down in the Constitution. However, there is no mandatory union recognition or compulsory collective bargaining rights in Irish legislation. Ireland currently has a voluntary industrial relations system whereby employers who want to engage with their employees collectively and engage with unions can do so, but it also respects the rights of employers who do not.

For those employers who recognise trade unions, the collective bargaining process will be a reality, whereby negotiations between the trade unions and management result in a collective agreement on either substantive or procedural matters.

Negotiations at the centre of collective bargaining can be defined as any form of direct or indirect dialogue between employers and unions which are used to:

- Determine the employment terms and conditions e.g. pay levels, working hours, holiday entitlements etc.
- Establish or review policies and practices relating to internal employee relations e.g. disciplinary and grievance procedures
- Design any joint action between management and trade unions.

Negotiations can be used to resolve an existing problem or lay the groundwork for future management-employee relationships. Companies may wish to have a recognition agreement in place with a certain trade union, with whom they will engage with. However employees do have the right to join whichever trade union they wish. The Irish Congress of Trade Unions (ICTU) is the single umbrella organisation for trade unions in Ireland, representing a range of interests of employees on the island of Ireland. The Irish Business and Employers Confederation (IBEC) is one of a number of national employers' organisations who provide services to member companies.

Employee representation

The following legislation provides for employee representation which can include a registered trade union:

- S.I. No. 147/2000 – Industrial Relations Act, 1990 Code of practice on Grievance and Disciplinary Procedures
- The Protection of Employment Acts 1977-2014
- The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003
- Employees (Provision of Information and Consultation) Act 2006
- Transnational Information and Consultation of Employees Act 1996

Employers should note that dismissal for trade union activity or membership is automatically deemed to be unfair under the Unfair Dismissal Act 1977 - 2015. An employee who is dismissed in such circumstances can enforce his/her rights regardless of their length of service.

2.10 Grievance and Disciplinary Procedures

In any period of employment, the possibility of a grievance or disciplinary issue may arise. In the interests of good industrial relations, it is advisable that employers agree fair and equitable procedures to deal with such instances. These agreed procedures will provide a framework which enables management to handle disciplinary issues in a fair and consistent manner and grievances to be handled in accordance with the principles of fairness and natural justice.

The purpose and content of these procedures should be clearly understood by all employees. The procedures should be in writing and presented in an easily understood format and language. Copies of the procedures should be readily available to all staff. Copies of the procedures should be given to all new employees and they should be included in any employee induction. Employers should periodically request their employees to re-familiarise themselves with the content of the procedures.

The principles and procedures outlined in the S.I. No. 146/2000 Code of Practice on Grievance and Disciplinary Procedures (The Industrial Relations Act, 1990) should underpin any agreed company procedures relating to grievance and disciplinary. In the absence of any such agreed company procedures the Code of Practice itself would be applied.

Grievance Procedures

Failure to resolve a grievance without delay and in a fair manner may result in a minor grievance escalating into a dispute. An agreed grievance procedure will ensure that all grievances are dealt with fairly and consistently, adhering to the principles of natural justice which require that:

- Employee grievances are fairly examined and processed
- Details of any allegations or complaints are put to the employee concerned
- The employee concerned is given the opportunity to address fully the allegations or complaints
- The employee concerned is given the opportunity to avail of the right to representation during the procedure
- The employee concerned has the right to a fair and impartial determination of the issues involved, taking into account any representations made by or on behalf of them and any other appropriate or relevant factors, evidence or circumstance.

Disciplinary Procedures

The purpose of any disciplinary procedure is to ensure that any disciplinary issues are handled fairly and consistently. The basis for disciplinary action and the range of penalties that can be imposed should therefore be clearly defined.

Grounds for dismissal

The Unfair Dismissals Acts 1977 - 2015 set out grounds for dismissal which if proven would be held as fair. Of these grounds, those that would usually be involved in disciplinary procedures would be:

- Capability - prolonged absence or sporadic absence or repeated lateness
- Competence
- Conduct, including gross misconduct
- Other substantive reasons.
- Qualifications, where false information has been provided

Where appropriate, attempts should be made to resolve minor disciplinary issues on an informal basis between the employee concerned and their immediate supervisor, for example through performance counselling. However, should disciplinary action be warranted, agreed disciplinary procedures should be applied. In most cases the steps in the disciplinary procedure will be progressive. However there may be instances which may require more serious action to be taken at an earlier stage. In these instances, a full and thorough investigation must take place, complying with the principles of natural justice.

03 Ending the employment relationship

The termination of the employment contract typically occurs in two manners:

- Termination by the employee due to resignation.
- Termination by the employer, for a variety of possible reasons (dismissal, redundancy etc.).

Employees and employers are obliged to give notice when employment is being terminated. The minimum notice to which an employee is entitled will vary according to their length of service and is governed by the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Notice should be given in writing directly to the employee concerned. Under the legislation the employer is entitled to one week's notice from an employee who is terminating their employment and has at least 13 weeks service.

Should the contract/statement of employment provide for a longer period of notice for either the employee or the employer than that stipulated in the legislation, the contractual notice period will be binding. The Act provides for either side to voluntarily waive their right to notice. It also allows for employees to accept payment in-lieu of notice.

Notice Periods

Length of Service	Entitlement
13 weeks to 2 years	1 week
2 years to 5 years	2 weeks
5 years to 10 years	4 weeks
10 years to 15 years	6 weeks
15 years+	8 weeks

3.1 Termination by the Employee

Resignation

A resignation is usually straightforward as it involves the employee resigning at their behest and for their own reasons (e.g. taking up another job, going back to education, due to personal reasons). It is recommended that employers carry out exit interview with the departing employee to ensure they are not leaving on account of any particular grievance which might manifest itself as a legal claim post-termination of their employment.

3.2 Termination by the Employer

This is often the most contentious area of HR. It is strongly encouraged that any company who may be contemplating the termination of a contract of employment, in any circumstances, takes professional advice at the earliest possible stage prior to embarking on this course of action.

3.3 Dismissal

The Unfair Dismissals Acts 1977 - 2015 protect employees from unfair dismissal where they have at least one year's service. Where the dismissal is related to trade union membership/activity or for exercising an employee's right under certain employment legislation (e.g. maternity, parental, adoptive, carer's leave or minimum wage, there is no service threshold).

Constructive dismissal: Describes a situation where an employee resigns because the employer has committed a serious breach of contract. This may occur for example, where the employer fails to pay wages in accordance with the contract, or the employee feels that the actions of the employer towards him or her are so unacceptable that there is no alternative but to leave employment. Such an employee can seek redress under the Unfair Dismissals Acts, 1977 - 2015.

Summary dismissal: Describes a situation where the employer dismisses an employee without notice for an act of misconduct which involves an unacceptable breach of contract. The employer is still obliged to follow fair procedures and act reasonably before summarily dismissing an employee. Failure to do so may result in a successful claim for unfair dismissal by the employee.

3.4 Redundancy

It is considered good practice for employers to have an agreed formal procedure in place to deal with redundancy situations. Those with recognition agreements with trade unions should enter into negotiations with them to agree the procedures. Individuals' rights in a redundancy situation are protected by the Redundancy Payments Acts, 1967 to 2014. The Protection of Employment Acts, 1977-2014 make additional consultative and notification provisions for a collective redundancy situation.

Redundancy Situations

Under the terms of the Redundancy Payments Acts, 1967–2014, an employer can reduce his/her workforce if:

- The amount of work available has ceased or diminished.
- The method of work as changed.
- There is a requirement for the work to be done by fewer employees, e.g. funding is no longer available.

A genuine redundancy situation must exist. It is important to note that should such a situation exist, employers are obliged to consider whether any suitable alternative vacancies exist within the company.

Compulsory versus Voluntary redundancy

Voluntary redundancy arises when an employer needs to reduce their workforce and seeks volunteers from amongst their workforce for redundancy. Whilst the employee might volunteer for redundancy, employers should note that technically it is still the employer who is terminating the contract in these circumstances.

Compulsory redundancy should, where possible be a last resort. Organisations should try to reduce costs in every other area of the company, both pay and non-pay, before seeking to effect compulsory redundancies and they should seek professional guidance in advance of making any decisions in this regard.

Collective Redundancies

Under the Protection of Employment Acts, 1977–2014, a collective redundancy situation would apply if the proportion of employees at a place of work to be made redundant is at least:

- 5 out of a total of 21 – 49 employees.
- 10 out of a total of 50 – 99 employees.
- 10% out of a total of 100 – 299 employees.
- 30 out of a total of 300 + employees.

If these circumstances arise, the employer is legally obliged to enter into consultation with their employees and this must begin at least 30 days before the first notice of dismissal is issued. The Department of Business, Enterprise and Innovation must receive written notice, in a prescribed form, at the earliest opportunity and at least 30 days before the first notice of dismissal is given. This notice may run concurrently with the 30-day information and consultation process with employees. However, it is good practice to use this 30-day period of consultation for any individual who may be affected.

Notice

The Acts stipulate that an employee should be given two weeks' notice. However, this could be superseded by either their contractual notice period or their entitlements under Minimum Notice and Terms of Employment Acts 1973 - 2015 if either provides for a longer notice period. Notice of redundancy should be given in writing. For those that qualify for a redundancy payment, Part A of the RP50 redundancy form can be used for this purpose.

Eligibility for Redundancy Payments

The Acts oblige the employer to pay a minimum lump sum payment known as a statutory redundancy payment directly to any employee whose position has been made redundant, once they satisfy the following conditions:

- they are over 16 years of age
- they have been continuously employed by the company for 104 weeks (two years)
- their employment is fully insurable under the Social Welfare (consolidation) Act 2005
- they work or have worked under a contract of service or apprenticeship.

Employers should be mindful that employees on fixed term contracts with two or more years' service may be entitled to a statutory redundancy payment under the legislation, should their fixed term contract not be renewed.

Redundancy Payments

Entitlement to the statutory lump sum is calculated as follows:

- Two weeks' pay for each year of continuous reckonable service plus a bonus week, subject to a maximum of €600 per week.
- Weekly pay figure is calculated as the gross weekly wage at the date the employee receives notice of the redundancy, together with average regular overtime, bonuses and benefit-in-kind
- Any excess days over the complete years of service are calculated as a portion of the total year.

Please also refer to section 6.5 of Managing Better Financial Management for further information.

Challenging Redundancy

The Unfair Dismissals Act 1977-2015 allows the employee to challenge both the validity of the redundancy situation and the fairness of the selection procedure. This is usually done to a third party such as a Rights Commissioner or the Employment Appeals Tribunal.

To mitigate the likelihood of this occurring, when selecting positions for redundancy, employers need to consider how interchangeable all the roles are (regardless of the source of funding) within the company. The greater the amount of flexibility, inter-changeability and substitution there is between these roles, the better the chance the redundant employee has of proving that he/she was employed in the same or similar positions to others who are still in the workforce. Employers should also ensure that selection criteria for redundancy are reasonable and objective and applied in a fair and consistent manner. It is automatically unfair to select an employee on any of the nine grounds (see section 1.1) contained in the Employment Equality Acts 1998–2015. Employers should also consider whether any selection method such as last in-first out could result in indirect discrimination.

Lay Off and Short Time Working

Should employers find themselves in a situation where there is a decrease or lack of work available, rather than making employees redundant, there is the option of introducing lay off or short time working.

Lay off is a situation where an employee receives no work and no pay for a period, which can be implemented in various different patterns. Short time working is a situation where an employee's working week or pay is reduced by more than half the norm.

Both of these should only be temporary measures. Should either measure last for a certain length of time, the employee may be entitled to a redundancy payment. They can only be introduced if provided for in the employee's contract of employment or by agreement with the employee. For more information on these measures, please see the Redundancy Guide on the Department of Employment Affairs and Social Protection website www.welfare.ie.

3.5 Retirement

There is no single fixed retirement age for employees in Ireland. Although the Employment Equality Acts 1998 – 2015 provide for age equality in employment, they do not however prevent employers from setting mandatory retirement ages. It is considered good practice to specify a mandatory retirement age in the contract of employment. When specifying the retirement age, it would be advisable to define in the contract of employment exactly when the retirement age is to take effect. For example if the retirement age is 65, it could be defined as taking effect either on the employee's 65th birthday or the final day before their 66th birthday.

Changes to the qualifying age for State pensions

The Social Welfare and Pensions Act 2011 made a number of changes to the qualifying age for State pensions. The qualifying age will rise to 67 in 2021 and 68 in 2028. So:

- If you were born on or after 1 January 1955 the minimum qualifying State pension age will be 67.
- If you were born on or after 1 January 1961 the minimum qualifying State pension age will be 68.

Further information on retirement ages is available from the Department of Employment Affairs and Social Protection website at www.welfare.ie

Handling Retirements

It is important to meet retiring employees to discuss their retirement in good time prior to the retirement date time (i.e. at least 12 months prior to the expected date) so as to allow sufficient time for planning, arranging advice regarding pension, succession planning and considering reduced hours if appropriate.

3.6 Transfer of Undertakings

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) may apply where almost any type of business or part of a business is sold or transferred to another employer as a going concern. This is a complicated and technical area of HR. For further information please refer to www.workplacerelations.ie.

04 Key Employment Legislation

Adoptive Leave Acts, 1995 – 2005

Data Protection Acts, 1988 & 2003

Employment Equality Acts, 1998 – 2015

Freedom of Information Act, 1997 & 2003

Industrial Relations Act, 1990

Maternity Protection (Amendment) Act, 2004

Minimum Notice and Term of Employment Acts, 1973 – 2015

National Minimum Wage Act, 2000

Organisation of Working Time Act 1997

Parental Leave Acts, 1998 – 2006

Payment of Wages Act, 1991

Pensions Act, 1990

Protection of Employment Acts 1977 - 2014

Protection of Employees (Part-time Work) Act, 2001

Protection of Employees (Temporary Agency Work) Act, 2012

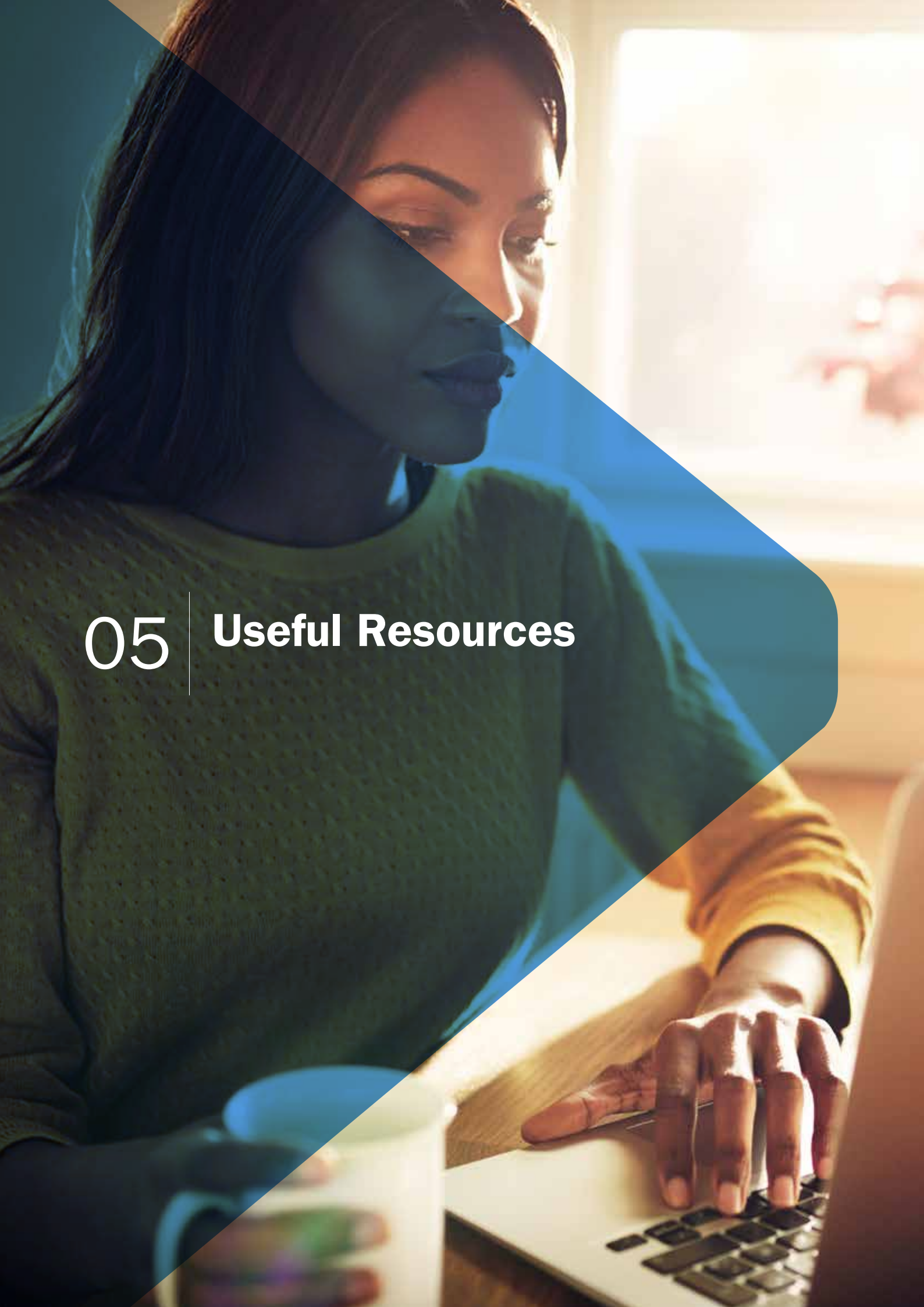
Redundancy Payment Acts 1967 - 2014

Safety Health and Welfare at Work Act, 2005

Terms of Employment (Information) Acts, 1994 – 2014

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003)

Unfair Dismissals Act, 1977 – 2015



05 Useful Resources

- Pobal, www.pobal.ie
- Data Protection Commissioner, www.dataprotection.ie
- Health and Safety Authority, www.hsa.ie
- The Irish Human Rights and Equality Commission https://www.ihrec.ie/
- Workplace Relations Commission https://www.workplacerelations.ie/en/
- Department of Employment Affairs and Social Protection, www.welfare.ie
- Department Jobs, Enterprise and Innovation, www.dbei.gov.ie
- Pensions Authority - http://www.pensionsauthority.ie/en/
- Irish Congress of Trade Unions, www.ictu.ie
- Irish Statute Book, www.irishstatutebook.ie
- Carmichael Centre, www.carmichaelcentre.ie
- Employers Resource Bureau http://www.employerresources.ie/
- Citizens Information Board www.citizensinformation.ie
- Chartered Institute of Personnel & Development www.cipd.ie

About Pobal

Pobal is a not-for-profit company that manages programmes on behalf of the Irish Government and the EU. We are an intermediary that works on behalf of Government to support communities and local agencies toward achieving social inclusion, reconciliation and equality. In 2017, we provided management and support services to 23 programmes for four different Government departments and EU bodies.

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