



**Q: Can my employer change the terms and conditions of my employment about sick leave pension and other rights from those in my contract of employment after I started work?**

A: Once your terms and conditions are agreed your employer may not generally speaking, vary these without your consent.

In the case of pension rights there should be written particulars of the pension scheme. These will set out exactly what your rights are. Your employer should have given you in writing a note of the scheme rules. If not, you should ask for a copy of the scheme rules. If you do not receive them you may bring a claim about this.

Your employer may alter the terms of your contract of employment in very limited circumstances. Your employer may alter your terms of employment provided it is necessary to give proper effect to the contract. Your employer may also do so where it is clear you would have agreed. Neither of these would normally apply to sick leave or pension rights. It certainly would not apply as regards, for example rates of pay.

Your employer may change your terms and conditions of employment by agreement with you or your Trade Union in certain cases. If you sign a document agreeing to a change from the terms and conditions of your employment then you would be bound by this.

Your contract of employment is legally binding on your employer and on you.

**Q: What are the maximum hours of work my employer can require me to work per week?**

A: For most workers the average maximum permitted working hours per week are 48. The averaging period for most workers is four months. In calculating the 48 hour maximum lunch and other breaks are not counted. If you do more than 20 hours between 12 midnight and 7am then the maximum is 40 hours per week averaged over 2 months.

When you work longer at times you are still entitled to minimum rest periods. These are 11 uninterrupted hours in any 24 hour period. This means that if you finish at 9pm at night you cannot be required to start work again the next day until 8am at the earliest. You must receive a 36 hour uninterrupted break period over a weekend. During the day the employer must make sure that you get a 15 minute break within 4.5 hours of starting work or a 30 minute break within 6 hours of starting work and thereafter every 4.5 and 6 hours an additional break. The break cannot be at the end of the day. The employer must keep records for three years of all hours worked by you.



Your employer cannot expect you to work in excess of an average of 48 hours per week. This is regardless of any pressure of work. Where an employer requires an employee to work in excess of the maximum hours or not to be given the proper rest period then a claim may be brought under the Organisation of Working Time Act 1997 to a Rights Commissioner. The level of compensation is up to 2 years wages in very serious cases.

**Q: I am paid €9 per hour. Sometimes I have to work on Sundays and at night time. Am I entitled to extra payments?**

A: If you work on a Sunday you are entitled to a premium payment. What your entitlement is depends on what is written in your contract of employment. Some contracts will say that the payment includes any premium that you would be entitled to. If your contract has such a condition you are not entitled to any Sunday premium. If no such clause is in your contract you are entitled to a Sunday premium. The law does not set out what this premium will be. You have to bring a claim to a Rights Commissioner under the Organisation of Working Time Act 1997. If you receive no Sunday Premium a Rights Commissioner can award you compensation. Unless your contract says that you must work on a Sunday then a Rights Commissioner can also award you compensation for being required to work on a Sunday with no such clause in your contract. You would need to check your contract to see what it says as regards Sunday work and a Sunday premium. Many people think they are entitled to extra payment if they work at night. There is no such right in Irish law. This matter should be covered in your contract. There was in Irish law a right to extra payments for working at night under what were called JLC's or Registered Employment Agreement. These have now been declared void.

**Q: I worked as hotel receptionist. My reason for resigning was I have to work a 6 day working week with 12 hours plus working hours per day.**

**Now the general manager refuses to pay me the days in lieu I am owed. My contract says I would be required to attend for sufficient hours to meet operational needs. The hotel does not pay overtime. The contract states that my days of work will be five days per week over a seven day roster. Do I have any rights? Does the fact that I am not from Ireland change matters.**

A: You appear to me to have been treated in an awful fashion by your employer. Subject to going through your contract of employment I believe there are several claims you may possibly be able to bring. You worked in excess of 48 hours per week. You could claim against your employer under the Organisation of Working Time Act 1997 for requiring you to work these hours.



As you worked more than 12 hours per day for 6 days you may also not have got the proper rest periods. You may also have a claim under the same act for your holiday entitlements.

As you worked over 72 hours per week then unless you were paid at least 622.80 gross per week you may well have a claim under the National Minimum Wage Act. You must be paid a minimum of €8.65 for every hour that you work.

If you worked on Sunday you would be entitled to a Sunday premium. This is an added payment, time off in lieu or a shift premium or unsocial hour's premium. Depending on your contract you may also have a claim for having to have worked on Sunday. There are a number of other claims that you may well have under the Organisation of Working Time Act.

Under the Payment of Wages Act 1991 you are entitled to bring a claim for any outstanding pay. This would include holiday pay but it is better to bring the holiday pay under an Organisation of Working Time Act claim. You may also have a right to bring a claim for the extra day you worked a week at your normal day pay rate.

It would appear to me that you have a significant number of employment claims under various pieces of employment legislation. The fact that you are not Irish does not matter.

**Q: I have worked for my employer for 5 years. I was laid off 2 months ago. My employer tells me he is looking for work but he has no work for me now. Am I entitled to redundancy?**

A: The simple answer is yes. Saying this, it is not simply a matter of putting in a claim for redundancy. Because you have been laid off you must serve what is called an RP9 on the employer. The employer then has seven days to respond. You cannot serve an RP9 until you have been out of work for at least 4 weeks on lay off. In your case as you have been out for 2 months you are entitled to furnish such a notice.

Your employer has a period of seven days to respond to the RP9. If he does not respond then you are automatically entitled to a redundancy payment. The claim will have to be made to the Employment Appeals Tribunal.

You must keep a copy of the RP9 document and evidence of it having being sent to the employer such as a registration slip.

Your redundancy is worked out on the basis of two weeks' pay for each year of service together with one week's extra pay. This is subject to a maximum limit of 600 euro per week. In your case this amounts to 6600.

If you serve an RP9 you lose your right to minimum notice payments.



As you have been laid off without pay you may be entitled to bring a claim against your employer for your pay during the period you were laid off. The fact that you may have received social welfare during this period does not mean you are not still entitled to get an extra payment from your employer. The law relating to redundancy is complex. Unless all the documents are served correctly in accordance with the law you may lose your redundancy entitlements. It is important that you get appropriate specialist legal advice from a Solicitor who specialises in employment law dealing with redundancy.

**Q: My employer has moved to new premises. I had been able to walk to work. I now have to get a bus. It costs me €6 a day in bus fares. Am I entitled to an extra payment from my employer or to claim redundancy?**

A: You are not entitled to an extra payment from your employer because you have to pay a bus fare now to travel to work. Equally you are not entitled to be paid for the extra time in travelling to and from work. The question of redundancy is more difficult. This depends on the circumstances. If you had to travel a long distance or it took a long time every day to travel to the new premises then you may be entitled to redundancy. In some limited cases you are entitled to refuse the change in location. However, the additional travel time would have to be substantial. It would depend upon the particular circumstances of your particular case. It will also depend on how much you are paid. If you are working a full 40 hours a week at 8.65 it might not be unreasonable to expect you to travel to a new premises. If you are only working 2 or 3 hours a day then the travel costs as a percentage of what you are earning are very high. This is an issue which would be worthwhile getting legal advice on from an employment Solicitor.

**Q I have been working in a shop full time for over five years. My contract says 37 hours a week. My Manager has been gradually reducing my hours. I now have 22 hours only. What should I do? My Manager will not talk to me about it. I think she wants me to resign. I am a good worker. I am never late. I have no warnings. The clients like me. I think she's trying to get rid of me.**



This is a common problem which I see. From what you tell me, it looks to me that you are right. Your Manager is probably trying to get rid of you. Your Manager probably wants you to resign.

You should not resign. My standard advice is never resign and never ask for a P45 because an employer will use it against you. You do not need a P45 to get a new job nor to get Social Welfare. This is a common mistake that people make.

In your case you can bring a claim for 15 hours wages per week under the Payment of Wages Act. Under the law the claim will be limited to 26 weeks loss. As your hours have been reduced you may well have a claim under the Organisation of Working Time Act for public holidays. If you are only paid on your normal hours worked and not on the 37 hours that you should receive then there is probably an underpayment of public holiday pay. There may well be an underpayment of holiday pay also. This should be brought also under the Organisation of Working Time Act. You should have your contract of employment looked at. Very few contracts comply with the law. You may be able to get compensation for this also. By bringing these claims if the employer tries to dismiss you you will have an additional not only for Unfair Dismissal but also for penalisation which can be a substantial sum of money. If you bring the claims you may well get your full hours back and compensation.

You have set out that you are a good worker. The law in Ireland does not take account of whether a person is a good worker or that they always arrive on time or that they are liked by clients. This has no role to play in setting any level of compensation.

From the facts set out to me you need to see a Solicitor to get legal advice as soon as possible. You should look to see a Solicitor who specialises in Employment Law. You should not tell your manager you are going to see a Solicitor.



**Q: I need to take six weeks off work to go home to do work on my Mother's house. My employer has told me I cannot. I have already booked the tickets. Can my employer refuse to give me the leave?**

A: Your employer can refuse you the leave. Your employer is entitled to set out when you will take your holidays. The employer does not have to give you additional leave in these circumstances. You should use the company grievance procedure, by writing to the company, setting out the reasons why you need to take the leave.

Maybe somebody at a higher level, in the company, will consent.

If you do not give the consent and you decide to go home then your employer may be able to dismiss you. Depending on how the employer deals with matters this may not be an Unfair Dismissal. You may be deemed to have voluntarily left the employment. This will have a significant impact on your entitlement to Social Welfare.

Most employers are not unreasonable. They may be prepared to give you the leave. This however may be at a later time. This may be when matters are not busy but even then they are not obliged to do so.

You may be entitled to Carers Leave if your Mother is ill or infirm. You would need to get advice on this. There are strict procedures for applying for same.