

## **Minimum Notice – A Guide for Employers and Employees\***

The firm of Richard Grogan & Associates are regularly asked about the right to Minimum Notice.

### **The Basic Position**

Where an employer wishes to terminate the Contract of Employment of an employee (by which we mean in plain English dismiss the employee) the Minimum Notice and Terms of Employment Act 1973 sets out the minimum requirements.

1. 13 weeks employment but less than 2 years employment – 1 weeks' notice
2. 2 years' service but less than 5 years' – 2 weeks' notice
3. 5 years' service but less than 10 years' service – 4 weeks
4. 10 years' service but less than 15 years' – 6 weeks
5. 15 years' or more – 8 weeks

Notice payments do not have to be paid in the case of gross misconduct but even then we advise employers to pay the Minimum Notice “without admission”.

What happens if the contract has a greater notice period

If the Contract of Employment has a greater notice period then the employee is entitled to the greater of the Minimum Notice under the legislation or under the Contract.

A common question that arises from employees where their contract is terminated but they have received the Minimum Notice entitlements under the 1973 Act but not the notice under their Contract as to whether they can bring a claim for Minimum Notice?. There are different opinions on this. There are even different Employment Appeals Tribunal Decisions (“EAT”). Some divisions of the EAT hold that the employee may bring a claim under the Act for the notice set out in their contract. Other divisions of the EAT take a different view. What is clear is that if an employee does not receive their full notice as set out in their contract of employment they may bring a claim under the Payment of Wages Act.

### **What is the position where the employee is given notice but still have outstanding holidays?**

There is no clear view in relation to this as to whether the employer may require the employee to take their holidays as part of their notice period.

In the case of Kelly –v- Michael Amber Limited M409/1979 the EAT held that the employer is entitled to require the employee to take their holidays as part of the Notice Period. The opposite position was taken in the case of Maher –v- Ashton Tinbox Ireland Limited M4720/1986.

The difficulty is that the EAT deal with claims under the Minimum Notice and Terms of Employment Act 1973. The issue of holidays is dealt with by the Rights Commissioners / Labour Court under the Organisation of Working Time Act. An employer who seeks to require an employee to take holidays as part of their period of notice may have difficulties and may end up being sued by the employee.

### **Is an employer entitled to require an employee not to work during the period of their notice?**

The answer to this question depends on whether the Contract of Employment provides that the employer may require the employee not to work during their notice period. Unless the Contract of Employment specifically provides that an employer does not require the employee to work during the period of their notice then the employee is entitled to work during that period of time except where the employee is dismissed “for cause”. We would refer you to our Guide to contracts of employment for more information on this matter.

### **What can an employee do if they do not receive their Minimum Notice?**

If an employee does not receive their Minimum Notice then the employee may bring a claim under the Minimum Notice and Terms of Employment Act 1973. If the employee has a contract which provides for longer notice periods then the employee may also bring a claim under the Payment of Wages Act.

**\*Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

**\*In contentious cases a solicitor may not charge fees or expenses as a proportion or percentage of any award or settlement.**