

Employer essentials

Introduction to Irish employment
law for US employers



In Ireland, the employment relationship is governed by the general principles of contract law, the Constitution and employment legislation. Mandatory employment law applies to employees working in Ireland and these provisions cannot be contracted out of in the employment agreement.

Employees in Ireland have a number of rights which employees in the US do not have. The following sets out briefly some key provisions that are relevant for employing people in Ireland.



1. Written terms and conditions

A written employment agreement setting out all the terms and conditions of employment is not required. A written statement of certain terms and conditions of employment must, however, be provided to employees within two months of their commencement date. This statement must provide the following details: the name and address of the employer; the place of work; the title of the job; the start date; the rate of pay; pay intervals; hours of work; the notice period; terms and conditions relating to sick leave; pension; paid leave; and details of any collective agreements applicable to the employee's employment.



2. Minimum wage

The minimum wage is €9.55 per hour and will be €9.80 on January 1, 2019. It can be less if employees are under the age of 18, if it is their first job after reaching 18 or if they are trainees.

Fast fact

Minimum wage per hour
from January 1, 2019

€9.80



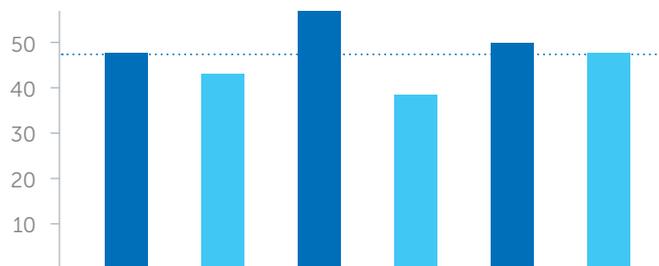
3. Working hours

Generally, employees cannot be required to work more than 48 hours per week averaged over a four month period. Senior employees who determine their own working hours are not subject to this restriction.

Generally, employees must have at least 11 consecutive hours rest in every 24 hour period and must have a full 24 hours' rest period once per week, usually Sunday unless otherwise specified in terms of employment.

Fast fact

Max average allowed working hours per week



48
hours

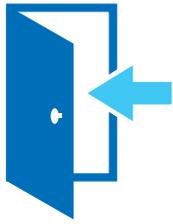


4. Equality

Employers must not discriminate on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the traveler community (a community recognized as a distinct ethnic group who, historically, have had a nomadic way of life on the island of Ireland).

This applies to all areas of employment including recruitment, training and promotion.

Discrimination is defined as treating one person in a less favorable manner than another person in a comparable situation. Employers also have a duty to ensure that harassment (including sexual harassment) of employees does not occur. If harassment occurs as a result of an employer's failure to fulfill its duty, the employer may be held liable.



5. Leave

Paid leave Employees are entitled to paid leave (the US equivalent being PTO) which is four working weeks (typically 20 days) for employees working over 1,365 hours per year. Usually, most US employers operating provide employees in Ireland with 25 days' paid leave.

Public holidays In addition to paid leave, employees are entitled to nine public holidays which are: January 1, March 17, Easter Monday, first Monday in May, first Monday in June, first Monday in August, last Monday in October, December 25 and December 26.

Maternity leave Female employees are entitled to 26 consecutive weeks' maternity leave. There is no obligation on an employer to pay an employee on maternity leave, unless their contract states they are entitled to maternity pay. Employees on maternity leave are entitled to social welfare payments at a standard rate of €240 per week (increasing to €245 per week in 2019), provided that the employee has made the necessary PRSI contributions.

They are also entitled to 16 additional weeks' unpaid maternity leave. No social welfare payments are payable during this additional maternity leave period. Employees must provide 4 weeks' notice in writing to the employer of their intention to take maternity leave. Employees are also entitled to paid time off during working hours for pre and post-natal medical appointments. Employees accrue paid leave whilst on maternity leave.

Paternity leave Employees are entitled to two weeks' paternity leave if they are a "relevant parent" for the purposes of the applicable legislation. A "relevant parent" is defined as the father of the child, the spouse, civil partner or cohabitant of the mother of the child or of the adopting mother or sole male adopter or the nominated parent in the case of a married same-sex couple who have adopted.

There is no obligation on an employer to pay an employee on paternity leave, save for circumstances in which they have a contractual entitlement to be paid during paternity leave. Employees on paternity leave are entitled to social welfare payments at a standard rate of €240 per week (increasing to €245 per week in 2019), provided that the employee has made the necessary PRSI contributions. Eligible employees can avail of paternity leave at any time in the 26 weeks following the birth or adoption of the child. They must provide at least 4 weeks' notice in writing of their intention to take paternity leave. Employees accrue paid leave whilst on paternity leave.

Fast fact

Weeks off for
parental leave

18 Weeks

Parental leave Parental leave is 18 weeks in respect of a natural child, adopted child, or child for whom the employee acts in loco parentis. This leave must be taken before child reaches eight years of age and it is open to both fathers and mothers. There is no obligation on the employer to pay their employees during parental leave. Currently, there is no entitlement to social welfare during this period, however, the Government has announced that it will be introducing two weeks of paid parental leave in November 2019 to be taken in the first year of the child's life. The 18 week period can be taken in one continuous period or in separate blocks of a minimum of six weeks with 10 weeks or more between each block.

The employer has the right to postpone parental leave if it would have substantial adverse effect on the operation of the business, but it cannot be postponed for more than six months. Employees accrue paid leave whilst on parental leave.

Adoptive leave This consists of 24 weeks' leave to care for an adopted child in respect of which social welfare is payable (subject to sufficient social insurance contributions) plus 16 additional weeks' unpaid adoptive leave. An employee is not entitled to be paid by their employer during adoptive leave unless paid adoptive leave is provided for in the employee's contract. Employees are entitled to PTO for preparation and pre-adoption classes and meetings with social workers. This applies to adopting mothers and sole adopting fathers.

Employees accrue paid leave whilst on adoptive leave.

Fast fact

Entitled health and safety leave for employees

21 Days

Health & safety leave This applies to pregnant employees, employees who have recently given birth and employees who are breastfeeding.

A risk assessment by the employer must be carried out on the health and safety of the applicable employee. If this reveals a risk, and it is not possible to adopt preventative measures, then working hours and/or conditions must be adjusted or suitable alternative work must be provided. If none of these options are feasible, the employee is entitled to health and safety leave for the first 21 days during which the employer pays the employee their normal wage. The employee may be entitled to social welfare payments for the remainder of the leave.

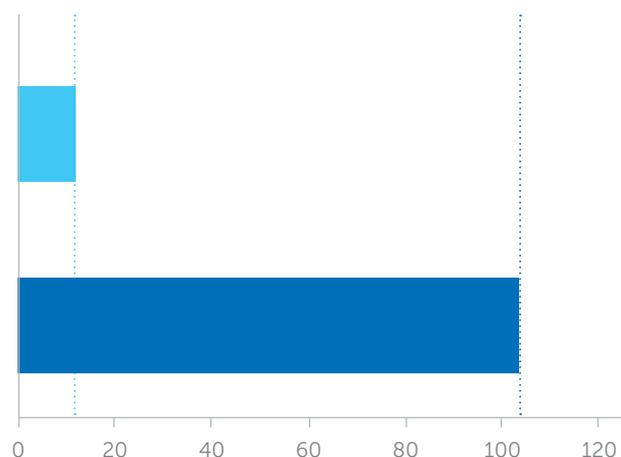
Carer's leave This allows employees to leave their employment temporarily to provide care for someone in need of full-time care and attention. An employee is entitled to take carer's leave of at least 13 weeks up to a maximum of 104 weeks. A request for less than 13 weeks' carer's leave may be refused. Employees are not entitled to be paid during carer's leave but may be entitled to Carer's Benefit from the State.

Fast fact

Length of temporary leave to provide care for someone

13
Weeks min

104
Weeks max



Sick leave Generally employees have no right under employment law to be paid while on sick leave. Employers often require a medical certificate from a doctor if an employee is out on sick leave for more than two consecutive days. In certain circumstances where an employee is absent from work consistently employment may be terminated.



6. Employment permits

The European Economic Area consists of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. All foreign nationals, except those from the European Economic Area and Switzerland, generally require employment permits to allow them to work in Ireland.

There are nine types of employment permits in Ireland: the Critical Skills Employment Permit; the Intra-Company Transfer Employment Permit; the Exchange Agreement Employment Permit; the Dependant/Partner/Spouse Employment Permit; the Contract for Services Permit; the Sport and Cultural Employment Permit; the General Employment Permit; the Reactivation Employment Permit; and the Internship Employment Permit.

An application for an employment permit will not require a labor market needs test to be carried out where the job is listed on the Highly Skilled Occupations List or where the job has an annual salary in excess of €60,000.

US citizens are not required to have a visa to enter Ireland. However, they do require a permission to remain in Ireland if they intend to stay for a period of more than 90 days.



7. Termination of employment

Unlike in the US, there is no concept of "at will" employment in Ireland. Once employees have one year's service, they generally may only be dismissed for redundancy (lay off), incapability, competence and/or misconduct. Fair procedures must be followed in carrying out any dismissal. If a dismissal falls foul of either of these criteria, it risks being deemed "unfair" for the purposes of the unfair dismissals legislation. Employees can seek relief for unfair dismissal of up to two years' gross remuneration, re-engagement or re-instatement.

Fast fact

Service requirement for protection from unfair dismissal

1 Year



8. Business transfers

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 apply in Ireland. Where an undertaking is transferred from one entity to another, resulting in a change of employer (eg an asset transfer), the rights and obligations of the transferor in relation to the contracts of employment of its staff are transferred to the new owner. The new owner must continue to observe the terms and conditions of the contracts of employment that have been transferred.

Dismissal on the grounds that the undertaking has been transferred is prohibited. Dismissal can only be justified if it can be shown that it is necessitated by economic, technical or organizational reasons which require changes in the workforce.



9. Intellectual Property

An employer will be the first owner of copyright in material made in the course of a person's employment unless there is an agreement to the contrary. An employer is also entitled to protect patents. It is good practice to include a clause in an employment agreement providing that the employer owns any intellectual property rights that employees create in the course of their employment.



10. Non-compete clauses and restrictive covenants

There is no restriction on employees working for another business in their free time – this is subject to an employee's general duties of fidelity and confidentiality. Contracts of employment may sometimes contain provisions as to what an employee can engage in (eg exclusivity clauses). A contract may also contain non-compete clauses to prevent an employee working for a competitor during and after their period of employment with an employer. Post-employment non-compete clauses can be difficult to enforce and must be limited as to what is reasonable to protect the goodwill of the employer. Covenants must be limited to type of business, time period of restriction and geographical area as to where restriction applies.



11. Data privacy

Employees in Ireland have more rights to privacy than they do in the US. An employer must have a legal basis upon which to process the personal data of an employee (eg performance of a contract or compliance with employment statutes). Consent is not a valid legal basis in an employment context and use of same as a legal basis for processing personal data should be avoided. Employees should be provided with a data privacy notice setting out the types of data that will be processed in connection with their employment, the legal bases for same and the data protection rights of the employee. If employees will be handling personal data of customers/clients, the employer should have a data protection policy in place providing the employee with guidelines on the collection and processing of such data. Further rules apply to the monitoring of employees' email and internet use, the use of CCTV in the workplace and the transferring of employee data outside the EU, which would include accessing data on employees in Ireland from the US on a global HR network.



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