

English

Black & Ethnic Migrant Workers' Rights

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Peace



Northern Ireland - Ireland

European Regional Development Fund

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Northern Ireland Committee
Irish Congress of Trade Unions



1. INTRODUCTION

If you are working in Northern Ireland you are entitled to legal minimum rights at work, including the right to join a trade union and to work free from unlawful discrimination and harassment.

The Irish Congress of Trade Unions has put together this booklet for you and other migrant workers. It highlights some of your rights in the workplace, where to go to find out more and how to get help if have a problem in work. It's important for you to read this booklet and show it to your co-workers and friends.

It is particularly important for black and minority ethnic migrant workers to join and organise in trade unions to avoid exploitation and poorer treatment than other workers.

WHAT IS A TRADE UNION?

- A trade union is an organisation which represents the interests of working people.
- Trade unions protect people at work and seek to improve the pay and working conditions of their members.
- Trade unions campaign for stronger employment protection law, equality and better living standards for working people.
- Trade unions are organisations independent of the state and employers. They are run by and for their members.

WHY JOIN A TRADE UNION?

- To ensure your employment rights are upheld and your working environment is safe.
- To protect and improve your pay, terms and conditions.
- To receive advice and guidance about your rights at work.
- To be represented at grievance and disciplinary hearings.
- To create a more inclusive and diverse workplace through the promotion of equality and harmonious relations.
- To have an influence on your working environment.
- You have a right to join a trade union regardless of your employment status from the first day of your employment.
- You cannot be discriminated against for being a trade union member.

Trade unions promote training and learning in the workplace. Trade unions work with government and employers to encourage workers back into learning and upgrading their skills through nationally recognised qualifications. A wide variety of learning opportunities are available ranging from English for Speakers of Other Languages, to third level education courses. Many workplaces have Union Learning Representatives who will provide you with further advice and guidance.

If you are having problems at work, you have any enquiries about your rights, or for more information on joining a trade union please contact Kevin Doherty at

kevin.doherty@ictuni.org

or 028 9024 7940 or 07305 439360.

For information on what trade union you should join, check out

www.ictuni.org

Disclaimer: The information in this booklet is intended as a guide only and does not constitute legal advice.



2. YOUR PAY AND CONDITIONS OF EMPLOYMENT

You are entitled to a **written statement of your terms of employment** (this includes pay, place of work, job title, hours, holidays) within 2 months of starting your employment. You are also entitled to a contract of employment. Changes to any of the terms should be with your agreement and provided to you in writing.

You have a right to a written statement of wages (**Payslip**) each time you are paid showing how much you earn and any deductions.

The only money that can be taken out of your wages is:

- Tax or National Insurance as authorised by law;
- Other expenses can only be deducted from your wages with your agreement, unless authorised by your contract of employment.

The legal minimum wage, which all employers (excluding family members) are obliged by law to pay is:

	Rate per hour £ April 2018 to end of March 2019	Rate per hour £ April 2019 to end of March 2020
National Living Wage Workers aged 25 and over	£7.83	£8.21
National Minimum Wage Workers aged 21-24	£7.38	£7.70
National Minimum Wage Workers aged 18-20	£5.90	£6.15
National Minimum Wage Workers under 18	£4.20	£4.35

WORKING HOURS

Your terms of employment (contract) should specify the dates and times that you are to work. Otherwise, your employer is obliged to provide you with details of the times you have to work, at least 24 hours beforehand.

MAXIMUM WORKING WEEK

Your employer must have your agreement to work more than an average of 48 hours a week for each 7 day period (calculated over a 17-week period). Unless you work in a sector with its own special rules.

MINIMUM BREAKS

You have the right to a 20 minute rest break if you're expected to work for more than six hours on a shift.

You have the right to a break of at least 11 hours between working days.

You have the right to 24 hours clear of work each week or 48 hours clear each fortnight.

If you are a night worker – i.e. you work between 11.00 pm and 6.00 am - your employer cannot make you work more than an 8 hour shift.

HOLIDAYS

Your terms of employment (contract) should specify your holiday entitlement. Although your employer may offer you more your minimum rights are:

- you get a minimum of 28 paid days per year (5.6 weeks)
- if you work part-time you are entitled to the same level of

holiday pro rata

- you start building up holidays as soon as you start work
- you get paid your normal pay for your holiday
- when you finish a job, you get paid for any holidays you've not taken
- your employer can control when you take your holidays

You do not have a statutory right to paid leave on bank and public holidays. If paid leave is given on a bank or public holiday, this can count towards your 28 days minimum holiday entitlement.

Some employers run an 'accrual' system, where holiday entitlement is built up over the year. This means that for every month you work, you become entitled to one twelfth of your annual entitlement. So, after six months, you are entitled to a half of your annual entitlement.

SICK LEAVE

Many employees will be entitled to Statutory Sick Pay (SSP) if they are off work due to sickness. If you are off sick for more than four days you may be able to claim SSP. You can receive SSP for a maximum of 28 weeks. This is set out by law and is paid to you by your employer. In addition, some employees may

receive occupational sick pay from their employer but this will depend on your contract of employment.

Your employer may set out how and when you should notify them that you are sick. Usually you will be able to self-certify for a week of illness; beyond that a doctor's note is normally required.

FIXED TERM CONTRACT WORKER

If you are employed on a fixed term contract (i.e. you are not permanent), you may be entitled to the same pay, terms of employment, benefits package, pension and opportunities for promotion as an equivalent permanent employee. There's a limit of four years on how long an employee can be kept on successive fixed-term contracts. If your contract is renewed after that, you become a permanent employee, unless the employer can show a good reason why you should stay on a fixed-term contract.

Not renewing a fixed-term contract is treated as a dismissal, so if the contract is not renewed fixed-term employees also have:

- full redundancy rights (if continuously employed for two years or more)
- statutory protection against unfair dismissal (once they have one year's service)

PART-TIME WORKER

If you work part-time, you cannot be treated differently to someone who works full time simply on the basis of the hours that you work.

ARE YOU AN EMPLOYEE OR A WORKER?

In NI employment law there is a distinction between worker and employee. It is important to know whether you are a worker or an employee as although both have certain basic employment rights, there are additional rights for employees only.

If you are an agency worker (See AGENCY WORKERS section) or on a zero-hours contract you are likely to be entitled to workers' rights. But many agency and zero-hours contract workers will also be 'employees'.

Check with your union or the ICTU Migrant Workers Support Unit which rights you may qualify for.

AGRICULTURAL WORKERS

Includes workers in horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, market gardens and nursery grounds. The packing of produce is not classed as agricultural work, but picking/gathering is.

MINIMUM PAY AGRICULTURAL WORKERS MUST RECEIVE.

NOTE: These rates will change in April 2019. They will not fall below the National Minimum Wage (NMW) or the National Living Wage (NLW) rates.

Age Band of Worker	Under 20	21 to 24	25+
	Rate per hour £	Rate per hour £	Rate per hour £
Grade 1 - Minimum Rate - Applicable for first 40 weeks cumulative employment	6.88	7.38 (NMW)	7.83 (NLW)
Grade 2 - Standard Worker	7.42	7.42	7.83 (NLW)
Grade 3 - Lead Worker	8.16	8.16	8.16
Grade 4 - Craft Grade	8.76	8.76	8.76
Grade 5 - Supervisory Grade	9.26	9.26	9.26
Grade 6 - Farm Management Grade	10.04	10.04	10.04

The maximum deduction for accommodation is £37 per week.

When overtime is to be applied after 39 hours of work, it will be applied at a minimum of time and a half.

An agricultural worker in continuous employment with the same employer for a year or more is entitled to a total holiday entitlement of 29 days (proportionate to the number of days

worked per week).

SICK PAY SCHEME

The scheme provides sick pay for full-time workers who have worked continuously for the same employer for 52 weeks or more. It does not cover absences due to injuries sustained outside the course of work or illness due to pregnancy or maternity.

- You must notify your employer and produce a self-certified sick notice for an absence of seven days or less, or a medical certificate for a longer period of illness.
- You will not be paid for the first three days of absence unless you are absent for 14 days or more.
- You will be entitled to a half day's pay plus Statutory Sick Pay for every day of absence.

4. FAMILY & WORK

PREGNANCY AND MATERNITY

You are protected from any form of discrimination in relation to pregnancy or childbirth as soon as you are employed.

You cannot be legally dismissed because you are pregnant or for reasons connected with your pregnancy or maternity leave even if you have just started working for your employer.

If you are pregnant, as an employee you are entitled to

- Paid time off for antenatal care.
- Statutory maternity leave is for 52 weeks - 26 weeks' ordinary maternity leave (OML) from day one of starting a job and 26 weeks' additional maternity leave (AML).
- Statutory maternity pay (SMP) for 39 weeks, provided you have worked for your employer for 26 weeks by the 15th week before the baby is due, or Maternity Allowance if you do not qualify for SMP. AML is unpaid.
- Continuation of the contract of employment except for pay. However during AML, some terms of the contract don't necessarily apply.
- Right to return to the same employment after OML, if possible, or the same or similar employment after AML.
- Priority treatment in redundancy situations.
- Work in a safe environment
 - If risks cannot be reduced or removed and there is no suitable alternative work (at the same rate of pay and no less favourable terms) an employer must suspend the employee from work on paid leave until their maternity leave begins.
- Be offered the same training and promotion opportunities while pregnant, as other staff.
- Be allowed to keep the same duties and responsibilities while pregnant.

PATERNITY LEAVE

If you are a working father or partner, you are entitled to a period of either one or two consecutive week's paternity leave when you and your partner have a child. You can also qualify for paternity leave when you adopt a child. Most fathers will be entitled to statutory paternity pay for their paternity leave.

SHARED PARENTAL LEAVE

A mother or adopter can reduce their maternity/adoption leave and opt into Shared Parental Leave (SPL). Eligible parents can exchange part of their maternity or adoption leave for SPL and receive Statutory Shared Parental Pay. They can then share this leave with each other in a way that best suit their needs in caring for their child.

PARENTAL LEAVE

Parental leave allows employees to take unpaid time off work to look after a child. This leave is normally unpaid and is available for each child up to their 18th birthday.

TIME OFF FOR DEPENDANTS (COMPASSIONATE LEAVE)

There is a statutory right called 'time off for dependants' which gives you the right to reasonable unpaid time off in some circumstances, e.g. dealing with emergencies involving a 'dependant'. 'Compassionate leave' describes time off work to deal with personal circumstances such as bereavement.

FLEXIBLE WORKING

If you are an employee but also have caring responsibilities for children, elderly relatives or dependants you can apply for the right to request flexible working.

AGENCY WORKERS

You are an agency worker if you have a contract with a recruitment agency but you work temporarily for another employer (hiring organisation).

When an agency offers you work they must give you written details within 3 days that includes:

- Who the hiring organisation is.
- Location.
- Start date.
- Likely duration of the assignment.
- Type of work.
- Hours.
- Pay.

After working in the same role at the same hiring organisation for more than 12 weeks, an agency worker must receive the same pay as staff directly employed by the hiring organisation unless they are on a pay between assignments contract.

EMPLOYMENT RIGHTS FOR ALL AGENCY WORKERS

All agency workers, including those on pay between assignment contracts, have employment rights, including:

- Be paid the legal minimum wage
- Not to have unlawful deductions made from your wages
- Not to be discriminated against or harassed
- Not to be discriminated against because you work part time
- Entitlement to rest periods and have a limit on the hours of your working week
- Have the statutory minimum paid holidays
- Statutory sick pay, statutory maternity pay, statutory adoption pay and statutory paternity pay if you meet the qualifying conditions
- To protection during pregnancy
- To protection under health and safety laws
- To join a trade union
- To be accompanied at a grievance or disciplinary hearing
- Automatic pension enrolment after 12 weeks.

PAY BETWEEN ASSIGNMENTS CONTRACT

If your agency offers you a permanent contract and pays you between assignments you're on a pay between assignments contract:

- This means you may be an employee of the agency.
- You will not be entitled to the same pay as direct employees after 12 weeks. However, you will be entitled to all other employment rights including holidays and hours of work. You'll also be entitled to access to facilities and information about permanent vacancies with your employer from the first day of the job.
- If you're on a pay between assignments contract, the agency will pay you if your job ends and you have to wait before starting a new one.
- This pay must be either at least 50 per cent of the pay you received on your last job or the national minimum wage rate for the hours you worked on the last job, whichever is the greater.
- The agency must also try to find and offer suitable jobs to you

- when you are not working.
- The agency cannot end your contract until there have been at least four weeks between jobs when you were not working but were paid by the agency.
- When a pregnant agency worker has completed a 12-week qualifying period within the same job, they will be entitled to paid time off for antenatal care.
- You may be entitled to Maternity Leave.

YOUR SAFETY AT WORK

6.

Employees have a right to be safe at work. By law your employer must provide:

- A safe place of work
- Safe plant and equipment
- Safe systems of work
- Competent co-workers

You must also contribute in every way possible to a safe work environment and obey lawful instruction from your employer to ensure safety.

If your employer recognises a trade union your employer must consult the safety representative. If there is no recognised union, your employer must either consult you direct or, a safety representative elected by the employees.

All employers, whatever the size of the business, must:

- make the workplace safe
- prevent risks to health
- ensure that plant and machinery

is safe to use, and that safe working practices are set up and followed

- make sure that all materials are handled, stored and used safely
- provide adequate first aid facilities
- tell you about any potential hazards from the work you do, chemicals and other substances used by the firm, and give you information, instructions, training and supervision as needed
- set up emergency plans
- make sure that ventilation, temperature, lighting, and toilet, washing and rest facilities all meet health, safety and welfare requirements
- check that the right work equipment is provided and is properly used and regularly maintained
- prevent or control exposure to substances that may damage your health
- take precautions against the

- risks caused by flammable or explosive hazards, electrical equipment, noise and radiation
- avoid potentially dangerous work involving manual handling (and if it can't be avoided, take precautions to reduce the risk of injury)
- provide health supervision as needed
- provide protective clothing or equipment free of charge (if risks

- can't be removed or adequately controlled by any other means)
- ensure that the right warning signs are provided and looked after
- report certain accidents, injuries, diseases and dangerous occurrences to either the Health and Safety Executive (HSE) or the local authority, depending on the type of business

7. EQUALITY AT WORK

It is against the law to treat a person less favourably than another person because of his or her:

- sex (including gender, marital or civil partnership status, pregnancy and equal pay),
- race, including colour, nationality, ethnic or national origins
- disability,
- religious beliefs,
- political opinion,
- sexual orientation,
- age

Such treatment includes all aspects of employment, e.g. pay, access to work, training or promotion, etc.

HARASSMENT

Harassment is defined in equality law as any act or conduct which is unwanted and unwelcome,

and which could reasonably be regarded as offensive, humiliating or intimidating.

Subjecting people to harassment or treating them less favourably on any of the above discriminatory grounds e.g. ethnicity or nationality through name-calling, isolation or exclusion within the workplace, unwarranted criticism of work performance, production, display or circulation of offensive material may all constitute examples of harassment.

SEXUAL HARASSMENT

Sexual Harassment is defined as unwanted verbal, non-verbal or physical conduct of a sexual nature which violates the dignity of a person or which creates for them an intimidating, hostile,

degrading, humiliating or offensive environment. Examples include:

- Sexually suggestive jokes,
- Innuendo,
- Questions or insults about one's private life,
- Unwelcome sexual attention, leering,

- Offensive gestures or whistling,
- Suggestions that sexual favours may further someone's career, or that refusal may damage it.

It also covers less favourable treatment as a result of rejecting or refusing to be submitted to the above conduct.

DISCIPLINARY & GRIEVANCE

8.

WHAT IS A DISCIPLINARY PROCEDURE?

Your employer must put their disciplinary procedure in writing, and make it easily available to you. There are minimum steps that must normally be included in a disciplinary procedure - these are known as the 'statutory minimum procedures'. Your employer must follow this procedure or the dismissal could be deemed 'automatically unfair'.

Disciplinary procedure:

1. You must receive a written statement setting out the reason (eg the conduct) that has led the employer to consider disciplinary action. Your employer should carry out an investigation where appropriate.

2. The employer must invite you to a meeting to discuss the issues. You have a legal right to take a work colleague or trade union official to the meeting with you. You must be given reasonable time to prepare and seek representation. You should also receive copies on any evidence the employer is relying upon.

Either at the disciplinary meeting or shortly after, your employer should tell you their decision. They should also confirm what they have told you in writing. Your employer must notify you of your right to appeal against the decision.

3. The appeals process is similar to the disciplinary procedure:
 - You write a letter giving reasons for appealing

- There's a meeting, usually with a more senior manager than was at the first meeting – you have the right to be accompanied to the meeting
- A final decision is made and given to you in writing.

WHAT IS A GRIEVANCE PROCEDURE?

A grievance is a complaint you make about somebody/something at work, e.g. pay and working conditions, disagreements with co-workers, discrimination, harassment etc.

Normally, you won't be allowed to make a complaint to an Employment Tribunal until you've followed the grievance procedure.

The grievance procedure is normally

1. You must set out your grievance in writing to your employer.
2. Your employer should invite you to a meeting to discuss the problem. Your grievance should be looked into in a fair and unbiased way. You have a legal right to take a work colleague or trade union representative to the meeting with you.
3. If you're not satisfied with the decision, or you think the procedure followed was flawed, you have the right to an appeal. This is usually heard by a higher level of management. The appeal hearing is similar to the original meeting, and you have a right to a companion, as before.

WHERE TO GET HELP

Irish Congress of Trade Unions – Migrant Workers Support Unit - If you are having problems at work, you have any enquiries about your rights or for more information on joining a trade union.

T. 028 90247940, or kevin.doherty@ictuni.org

Equality Commission – Discrimination and harassment complaints.

T.028 90500600, or information@equalityni.org

Labour Relations Agency - Advice on employment practices.

T. 03300 552 220, or info@lra.org.uk

Health and Safety Executive NI - Responsible for the promotion and enforcement of health and safety at work standards.

T.0800 0320 121, or mail@hse-ni.gov.uk

Employment Agency Inspectorate (Department for the Economy) -

Responsible for the regulation of private recruitment sector (agency workers). **T. 028 9025 7554**, or eai@economy-ni.gov.uk

HM Revenue and Customs – Responsible for the enforcement of Living Wage and National Minimum Wage. **T. 0300 123 110**, or visit

www.gov.uk/government/publications/pay-and-work-rights-complaints

Agricultural Wages Board – Responsible for complaints about working environment, pay or holiday entitlement of agricultural workers.

T. 028 9052 4012 or 028 9052 4600, or farmpolicybranch@daera-ni.gov.uk

Gangmasters and Labour Abuse Authority - Responsible for regulating employment agencies, labour providers and gangmasters who provide workers to the agriculture, horticulture, shellfish gathering and any associated processing and packaging sectors. **T.0345 602 5020**, or licensing@gla.gsi.gov.uk

Office of the Industrial Tribunals and the Fair Employment Tribunal –

independent judicial bodies in Northern Ireland that hear and determine claims to do with employment matters and complaints of discrimination

www.employmenttribunalsni.co.uk/



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