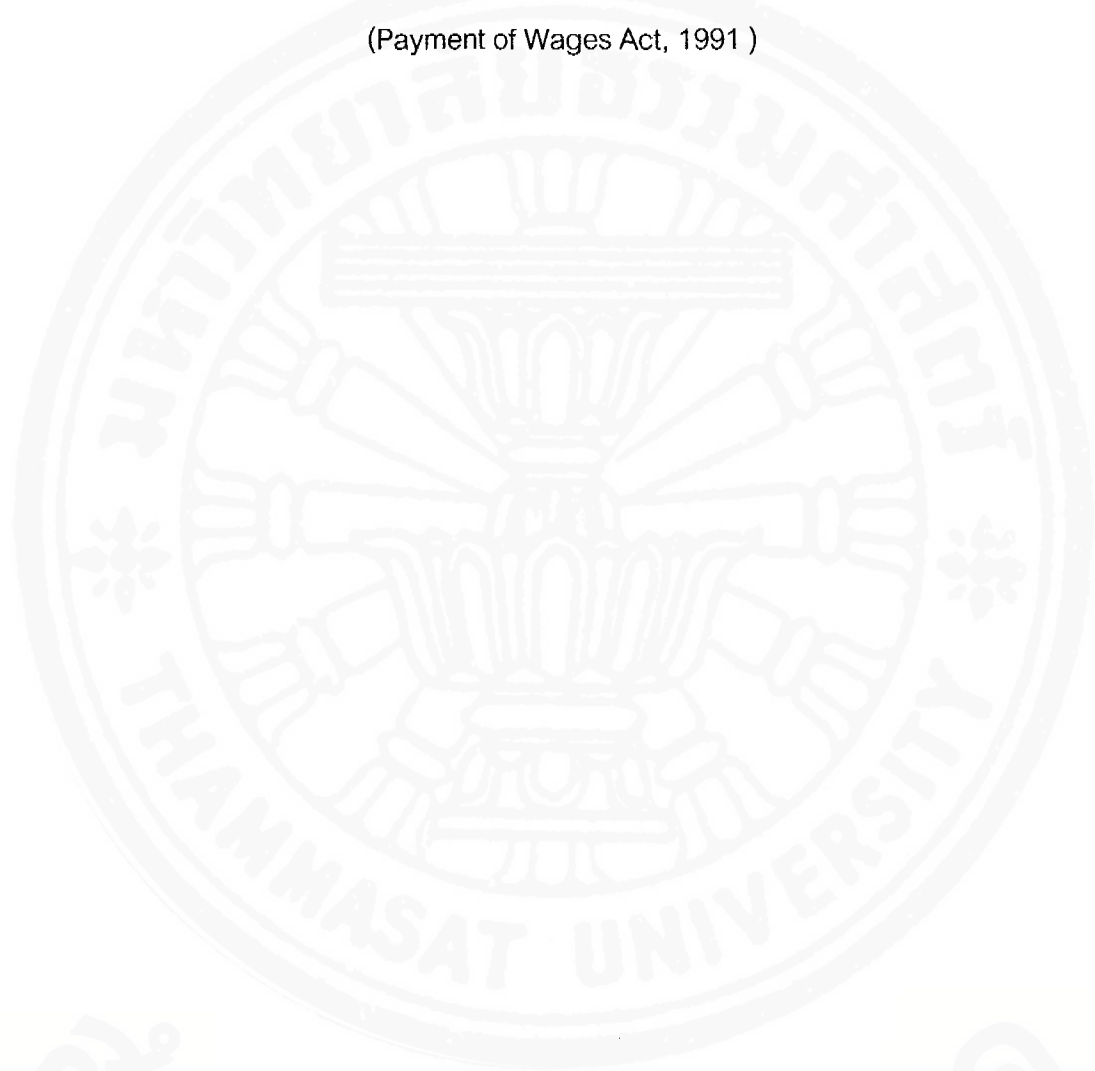


ผนวก ง

พระราชบัญญัติการจ่ายค่าจ้างของประเทศไอร์แลนด์
(เฉพาะบทบัญญัติที่เกี่ยวข้องกับการหักค่าจ้าง)
(Payment of Wages Act, 1991)



PAYMENT OF WAGES ACT, 1991

AN ACT TO PROVIDE FURTHER PROTECTION FOR EMPLOYEES IN RELATION TO THE PAYMENT OF WAGES, TO FACILITATE THE PAYMENT OF WAGES OTHERWISE THAN IN CASH, FOR THAT PURPOSE TO REPEAL THE TRUCK ACTS, 1831 TO 1896, AND RELATED ENACTMENTS AND TO PROVIDE FOR CONNECTED MATTERS.

[23rd July, 1991]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

"cash" means cash that is legal tender;

"contract of employment" means—

(a) a contract of service or of apprenticeship, and

(b) any other contract whereby an individual agrees with another person to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract) whose status by virtue of the contract is not that of a client or customer of any profession or business undertaking carried on by the individual, and the person who is liable to pay the wages of the individual in respect of the work or service shall be deemed for the purposes of this Act to be his employer,

whether the contract is express or implied and if express, whether it is oral or in writing;

"employee" means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer; and for the purpose of this definition, a person holding office under, or in the service of, the State (including a member of the Garda Síochána or the Defence Forces) or otherwise as a civil servant, within the meaning of the Civil Service Regulation Act, 1956, shall be deemed to be an employee employed by the State or the Government, as the case may be, and an officer or servant of a local authority for the purposes of the Local Government Act, 1941, a harbour authority, a health board or a vocational education committee shall be deemed to be an

employee employed by the authority, board or committee, as the case may be;

"employer", in relation to an employee, means the person with whom the employee has entered into or for whom the employee works under (or, Where the employment has ceased, entered into or worked under) a contract of employment;

"the Minister" means the Minister for Labour;

"strike" and "industrial action" have the meanings assigned to them by the Industrial Relations Act, 1990;

"the Tribunal" means the Employment Appeals Tribunal;

"wages", in relation to an employee, means any sums payable to the employee by the employer in connection with his employment, including—

- (a) any fee, bonus or commission, or any holiday, sick or maternity pay, or any other emolument, referable to his employment, whether payable under his contract of employment or otherwise, and
- (b) any sum payable to the employee upon the termination by the employer of his contract of employment without his having given to the employee the appropriate prior notice of the termination, being a sum paid in lieu of the giving of such notice:

Provided however that the following payments shall not be regarded as wages for the purposes of this definition:

- (i) any payment in respect of expenses incurred by the employee in carrying out his employment,
- (ii) any payment by way of a pension, allowance or gratuity in connection with the death, or the retirement or resignation from his employment, of the employee or as compensation for loss of office,
- (iii) any payment referable to the employee's redundancy,
- (iv) any payment to the employee otherwise than in his capacity as an employee,
- (v) any payment in kind or benefit in kind.

(2) Except in *section 5 (5) (f)*, a reference in this Act to an employer receiving a

payment from an employee is a reference to his receiving such a payment in his capacity as the employee's employer.

(3) In this Act, a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended.

(4) In this Act, a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

2.—(1) Wages may be paid by and only by one or more of the following modes:

- (a) a cheque, draft or other bill of exchange within the meaning of the Bills of Exchange Act, 1882,
- (b) a document issued by a person who maintains an account with the Central Bank of Ireland or a holder of a licence under section 9 of the Central Bank Act, 1971, which, though not such a bill of exchange as aforesaid, is intended to enable a person to obtain payment from that bank or that holder of the amount specified in the document,
- (c) a draft payable on demand drawn by a holder of such a licence as aforesaid upon himself, whether payable at the head office or some other office of the bank to which the licence relates,
- (d) a postal, money or paying order, or a warrant, or any other like document, issued by or drawn on An Post or a document issued by an officer of a Minister of the Government that is intended to enable a person to obtain payment from that Minister of the Government of the sum specified in the document,
- (e) a document issued by a person who maintains an account with a trustee savings bank within the meaning of the Trustee Savings Banks Act, 1989, that is intended to enable a person to obtain payment from the bank of the sum specified in the document,
- (f) a credit transfer or another mode of payment whereby an amount is credited to an account specified by the employee concerned,
- (g) cash,

(h) any other mode of payment standing specified for the time being by regulations made by the Minister after consultation with the Minister for Finance.

(2) Where wages fall to be paid to an employee by a mode other than cash at a time when, owing to a strike or other industrial action affecting a financial institution, cash is not readily available to the employee, the employer concerned shall, if the employee consents, pay the wages by another mode (other than cash) specified in *subsection (1)* and, if the employee does not so consent, pay them in cash.

(3) An employer who pays wages to an employee otherwise than by a mode specified in *subsection (1)* or contravenes *subsection (2)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ₦1,000.

3.—(1) The enactments specified in *column (2)* of the Schedule to this Act are hereby repealed to the extent specified in *column (3)* of that Schedule.

(2) Notwithstanding any provision of this Act—

(a) where, immediately before the commencement of this Act, an employee's wages were being paid to him in cash, the employer shall, while the employee is in the employment concerned, continue to pay those wages to him in cash unless any other mode of payment specified in *section 2* is agreed upon by the employer or an organisation representative of employers (of which the employer is a member) and the employee or an organisation representative of employees (of which the employee is a member), and

(b) where, immediately before such commencement, an employee's wages were being paid to him, pursuant to section 3 of the Payment of Wages Act, 1979, by an instrument or mode of payment to which that section applied, then, if after such commencement, the agreement or other arrangement authorising payment of the wages by the instrument or mode aforesaid is terminated in a manner specified in that section, the employer shall pay those wages to him in cash unless any other mode of payment specified in *section 2* is agreed upon as aforesaid.

(3) An employer who contravenes *subsection (2)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding 1,000.

4.—(1) An employer shall give or cause to be given to an employee a statement in writing specifying clearly the gross amount of the wages payable to the employee and the nature and amount of any deduction therefrom and the employer shall take such reasonable steps as are necessary to ensure that both the matter to which the statement relates and the statement are treated confidentially by the employer and his agents and by any other employees.

(2) A statement under this section shall be given to the employee concerned—

- (a) if the relevant payment is made by a mode specified in *section 2 (1) (f)*, as soon as may be thereafter,
- (b) if the payment is made by a mode of payment specified in regulations under *section 2 (1) (h)*, at such time as may be specified in the regulations,
- (c) if the payment is made by any other mode of payment, at the time of the payment.

(3) Where a statement under this section contains an error or omission, the statement shall be regarded as complying with the provisions of this section if it is shown that the error or omission was made by way of a clerical mistake or was otherwise made accidentally and in good faith.

(4) An employer who contravenes *subsection (1) or (2)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ₦1,000.

5.—(1) An employer shall not make a deduction from the wages of an employee (or receive any payment from an employee) unless—

- (a) the deduction (or payment) is required or authorised to be made by virtue of any statute or any instrument made under statute,
- (b) the deduction (or payment) is required or authorised to be made by virtue of a term of the employee's contract of employment included in the contract before, and in force at the time of, the deduction or payment, or
- (c) in the case of a deduction, the employee has given his prior consent in writing to it.

(2) An employer shall not make a deduction from the wages of an employee in respect

of—

(a) any act or omission of the employee, or

(b) any goods or services supplied to or provided for the employee by the employer
the supply or provision of which is necessary to the employment,

unless—

- (i) the deduction is required or authorised to be made by virtue of a term (whether express or implied and, if express, whether oral or in writing) of the contract of employment made between the employer and the employee, and
- (ii) the deduction is of an amount that is fair and reasonable having regard to all the circumstances (including the amount of the wages of the employee),
and
- (iii) before the time of the act or omission or the provision of the goods or services, the employee has been furnished with—

- (I) in case the term referred to in *subparagraph (i)* is in writing, a copy thereof,

- (II) in any other case, notice in writing of the existence and effect of the term,

- and

- (iv) in case the deduction is in respect of an act or omission of the employee, the employee has been furnished, at least one week before the making of the deduction, with particulars in writing of the act or omission and the amount of the deduction, and

- (v) in case the deduction is in respect of compensation for loss or damage sustained by the employer as a result of an act or omission of the employee, the deduction is of an amount not exceeding the amount of the loss or the cost of the damage, and

- (vi) in case the deduction is in respect of goods or services supplied or provided as aforesaid, the deduction is of an amount not exceeding the cost to the employer of the goods or services, and

(vii) the deduction or, if the total amount payable to the employer by the employee in respect of the act or omission or the goods or services is to be so paid by means of more than one deduction from the wages of the employee, the first such deduction is made not later than 6 months after the act or omission becomes known to the employer or, as the case may be, after the provision of the goods or services.

(3) (a) An employer shall not receive a payment from an employee in respect of a matter referred to in *subsection (2)* unless, if the payment were a deduction, it would comply with that subsection.

(b) Where an employer receives a payment in accordance with *paragraph (a)* he shall forthwith give a receipt for the payment to the employee.

(4) A term of a contract of employment or other agreement whereby goods or services are supplied to or provided for an employee by an employer in consideration of the making of a deduction by the employer from the wages of the employee or the making of a payment to the employer by the employee shall not be enforceable by the employer unless the supply or provision and the deduction or payment complies with *subsection (2)*.

(5) Nothing in this section applies to—

(a) a deduction made by an employer from the wages of an employee, or any payment received from an employee by an employer, where—

(i) the purpose of the deduction or payment is the reimbursement of the employer in respect of—

(I) any overpayment of wages, or

(II) any overpayment in respect of expenses incurred by the employee in carrying out his employment,

made (for any reason) by the employer to the employee, and

(ii) the amount of the deduction or payment does not exceed the amount of the overpayment,

or

(b) a deduction made by an employer from the wages of an employee, or any

payment received from an employee by an employer, in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision, or

(c) a deduction made by an employer from the wages of an employee in pursuance of a requirement imposed on the employer by virtue of any statutory provision to deduct and pay to a public authority, being a Minister of the Government, the Revenue Commissioners or a local authority for the purposes of the Local Government Act, 1941, amounts determined by that authority as being due to it from the employee, if the deduction is made in accordance with the relevant determination of that authority, or

(d) a deduction made by an employer from the wages of an employee in pursuance of any arrangements—

(i) which are in accordance with a term of a contract made between the employer and the employee to whose inclusion in the contract the employee has given his prior consent in writing, or

(ii) to which the employee has otherwise given his prior consent in writing, and under which the employer deducts and pays to a third person amounts, being amounts in relation to which he has received a notice in writing from that person stating that they are amounts due to him from the employee, if the deduction is made in accordance with the notice and the amount thereof is paid to the third person not later than the date on which it is required by the notice to be so paid, or

(e) a deduction made by an employer from the wages of an employee, or any payment received from an employee by his employer, where the employee has taken part in a strike or other industrial action and the deduction is made or the payment has been required by the employer on account of the employee's having taken part in that strike or other industrial action, or

(f) a deduction made by an employer from the wages of an employee with his prior consent in writing, or any payment received from an employee by an employer, where

the purpose of the deduction or payment is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of any amount by the employee to the employer, or

(g) a deduction made by an employer from the wages of an employee where the purpose of the deduction is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of any amount by the employer to the court or tribunal or a third party out of the wages of the employee.

(6) Where—

(a) the total amount of any wages that are paid on any occasion by an employer to an employee is less than the total amount of wages that is properly payable by him to the employee on that occasion (after making any deductions therefrom that fall to be made and are in accordance with this Act), or

(b) none of the wages that are properly payable to an employee by an employer on any occasion (after making any such deductions as aforesaid) are paid to the employee,

then, except in so far as the deficiency or non-payment is attributable to an error of computation, the amount of the deficiency or non-payment shall be treated as a deduction made by the employer from the wages of the employee on the occasion.

6.—(1) An employee may present a complaint to a rights commissioner that his employer has contravened *section 5* in relation to him and, if he does so, the commissioner shall give the parties an opportunity to be heard by him and to present to him any evidence relevant to the complaint, shall give a decision in writing in relation to it and shall communicate the decision to the parties.

(2) Where a rights commissioner decides, as respects a complaint under this section in relation to a deduction made by an employer from the wages of an employee or the receipt from an employee by an employer of a payment, that the complaint is well-founded in regard to the whole or a part of the deduction or payment, the commissioner shall order the employer to pay to the employee compensation of such amount (if any) as he thinks reasonable in the circumstances not exceeding—

(a) the net amount of the wages (after the making of any lawful deduction therefrom) that—

(i) in case the complaint related to a deduction, would have been paid to the employee in respect of the week immediately preceding the date of the deduction if the deduction had not been made, or

(ii) in case the complaint related to a payment, were paid to the employee in respect of the week immediately preceding the date of payment, or

(b) if the amount of the deduction or payment is greater than the amount referred to in *paragraph (a)*, twice the former amount.

(3) (a) A rights commissioner shall not give a decision under this section in relation to a deduction or payment referred to in *subsection (2)* at any time after the commencement of the hearing of proceedings in a court brought by the employee concerned in respect of the deduction or payment.

(b) An employee shall not be entitled to recover any amount in proceedings in a court in respect of such a deduction or payment as aforesaid at any time after a rights commissioner has given a decision under this section in relation to the deduction or payment.

(4) A rights commissioner shall not entertain a complaint under this section unless it is presented to him within the period of 6 months beginning on the date of the contravention to which the complaint relates or (in a case where the rights commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within the period aforesaid) such further period not exceeding 6 months as the rights commissioner considers reasonable.

(5) (a) A complaint shall be presented by giving notice thereof in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister.

(b) A copy of a notice under *paragraph (a)* shall be given to the other party concerned by the rights commissioner concerned.

(6) Proceedings under this section before a rights commissioner shall be conducted in public unless, and to the extent that, the commissioner, on application to him in that behalf by a party to the proceedings, decides otherwise.

(7) A rights commissioner shall furnish the Tribunal with a copy of any decision given by him under *subsection (1)*.

(8) The Minister may by regulations provide for any matters relating to proceedings under this section that he considers appropriate.

7.—(1) A party concerned may appeal to the Tribunal from a decision of a rights commissioner under *section 6* and, if he does so, the Tribunal shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination to the parties.

(2) An appeal under this section shall be initiated by a party by his giving, within 6 weeks of the date on which the decision to which it relates was communicated to him—

- (a) a notice in writing to the Tribunal containing such particulars (if any) as may be specified in regulations under *subsection (3)* and stating the intention of the party concerned to appeal against the decision, and
- (b) a copy of the notice to the other party concerned.

(3) The Minister may by regulations provide for all or any of the following matters in relation to proceedings before the Tribunal and for anything consequential thereon or incidental or ancillary thereto:

- (a) the procedure in relation to all matters concerning the initiation and the hearing by the Tribunal of appeals under this section,
- (b) the times and places of hearings of such appeals,
- (c) the representation of the parties to such appeals,
- (d) the publication and notification of determinations of the Tribunal,
- (e) the particulars to be contained in a notice under *subsection (2)*,
- (f) the award by the Tribunal of costs and expenses in relation to such appeals and the payment thereof,

(g) the extension by the Tribunal of the time for initiating such appeals.

(4) (a) The Minister may, at the request of the Tribunal, refer a question of law arising in proceedings before it to the High Court for determination by it and the determination of the High Court shall be final and conclusive.

(b) A party to proceedings before the Tribunal may appeal to the High Court from a determination of the Tribunal on a point of law and the determination of the High Court shall be final and conclusive.

(5) Section 39 (17) of the Redundancy Payments Act, 1967, shall apply in relation to proceedings before the Tribunal under this Act as it applies to matters referred to it under that section.

