

Reference No: E109/33/96 & E109/6/91 ; **Date:** 27/02/98

27/02/1998 LP:- Re: Organisation of Working Time Act, 1997

To: Each Personnel Officer

1. I am directed by the Minister for Finance to refer to the above Act and to a Commencement Order (S.I. Number 392 of 1997) which sets out the timetable for the implementation of the various Sections of the Act. In view of the complexity of the legislation, Personnel Officers should familiarise themselves with the Act itself and with any associated Statutory Instruments which have already been made and with any new such instruments or amendments of existing ones which may be issued in the future.

For ease of reference, a copy of the Act, current S.I.s and some explanatory leaflets are enclosed as follows: -

- The Organisation of Working Time Act, 1997 (No. 20 of 1997).
- S.I. Number 392 of 1997, (Commencement Order)
- S.I. Number 475 of 1997 (Determination of Pay for Holidays) Regulations
- S.I. Number 20 of 1998 (Exemption of Transport Activities) Regulations
- S.I. Number 21 of 1998 (General Exemptions) Regulations
- the Department of Enterprise, Trade and Employment's: -
- brief outline of the Organisation of Working Time Act, and
- explanatory leaflets on Holidays and Public Holidays and on Sunday Premium and Zero Hours.

2. A further Statutory Instrument is currently being drafted covering record keeping arrangements for employers. A copy of it will be circulated to you by this Department as soon as it becomes available from the Department of Enterprise, Trade and Employment. It is understood that the Labour Court has already circulated to each Personnel Officer a copy of a document setting out the Court's functions and procedures under the Act. As this document also contains some background information on the Act, it should be studied in conjunction with the enclosed documentation. Particular attention should be paid to the requirements of the Court in relation to collective agreements where they are required under the Act.

3. The Organisation of Working Time Act, 1997, confers legal rights on all employees concerning their hours of work, including minimum rest periods, annual leave and public holidays. This Department will shortly be consulting the Staff Side with a view to agreeing revised circulars on issues such as annual leave and overtime to reflect the new statutory arrangements under the Act.

4. In the meantime, however, Departments should, in particular: -

- take note of the arrangements in Part II of the Act relating to minimum rest periods and the manner in which the maximum working week of 48 hours is to be introduced. The outline of the Act enclosed with this minute sets out, in summary form, the relevant arrangements. In this connection, the maximum working week of 48 hours will come into effect in the third year following commencement of the Act and that in the interim, employees may, subject to certain conditions, be permitted to work more than an average of 48 hours per week over the two year period commencing on 1 March 1998. Accordingly, Departments should consider whether it is

necessary to provide locally for a maximum working week of more than 48 hours during this "interim" period for certain employees. Where Departments so decide a collective agreement approved by the Labour Court will be required in accordance with the Act (the relevant provisions are summarised in the enclosed outline of the Act and the related Guide to the Labour Court which has already been circulated to Personnel Officers (see paragraph 2 above);

- note that with effect from 30 September 1997, under Part III of the Act, employees must be granted their statutory annual leave entitlement within the leave year, or with the employees consent, within six months of the following leave year, and that officers who have untaken annual leave on cessation of employment are now entitled to payment in lieu of such leave;

- consider whatever steps may be necessary to comply with the provisions in Part IV of the Act relating to the obligations on employers to keep appropriate records. (As indicated in paragraph 2 above, a statutory instrument is currently being drafted which will set out in more detail the record keeping obligations of employers. This will be circulated to you as soon as it becomes available from the Department of Enterprise, Trade and Employment).

5. In relation to the Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997 your attention is drawn in particular to Sections 21 and 22 of the Act and paragraphs 4, 5 and 6 of the Regulations in so far as they affect job sharing staff. Paragraph 4 of the Appendix to this Department's Circular 3/84 specifies the arrangements to be followed in relation to public and privilege holidays for job-sharing staff who do not have a five half-days per week attendance regime. These arrangements are that entitlements arising from public or privilege holidays accrue to the officer who would otherwise be scheduled for duty on the day in question, with Departments varying the normal attendance regime, where necessary, with a view to allowing both job sharing partners to benefit equally from public and privilege holidays (paragraph 4 of the Appendix to Circular 3/84 refers).

6. While this practice should continue, a jobsharer who would not normally have been scheduled for duty on a particular public holiday or privilege day is entitled, with effect from 8 December 1997, to an additional half-day's pay in respect of that day. This means that for each public holiday/privilege day, where two members of staff are job sharing with each other in a matching attendance pattern, one will receive a day off on full pay * and one will receive an additional half-day's pay. Where a person is job sharing without a partner, that person will receive a day off on full pay in respect of a public holiday/privilege day on which

*See attached note re calculation of pay for job-sharing staff.

s/he would normally have been scheduled to work and an additional half-day's pay in respect of a public holiday/privilege day on which s/he would not normally have been scheduled to work. Where a person's attendance regime is mornings only or afternoon's only, there is no change in the current arrangements, in that they will continue to receive their normal half-day's pay for each public holiday or privilege day.

7. Further clarification has also been sought on the entitlements, if any, conferred on officers on career breaks or other forms of special leave without pay, by Section 21 (5) of the Act. I will contact you further in this regard.

8. Any queries concerning this letter should be addressed to Mr Pat Fitzsimons, GTN 7109 Extn. 5445 or Ms. Mary Golden GTN 7109 Extn. 5464, and (in relation to the implications for job-sharers of the Determination of Pay for Holidays Regulations) Ms. Cloda Ryan, GTN 7109 Extn. 5439.

9. Additional copies of the Organisation of Working Time Act, 1997 and related Statutory Instruments can be obtained from the Government Publications Sales Office, Molesworth Street, Dublin 2. Further copies of the explanatory leaflets and the brief guide to the Act can be obtained from the Information Section, Department of Enterprise Trade and Employment, 65A, Adelaide Road, Dublin 2.

Joe McGovern
Assistant Secretary