

## **Implications of the High Court Decision Delivered on July 7<sup>th</sup> 2011 in Relation to Employment Regulation Orders (EROs).**

### **Frequently Asked Questions**

The High Court has made the ruling that the Employment Regulation Order (ERO) wage setting mechanism is unconstitutional. Detailed information in relation to NERA and the implications of the ruling follows.

Please be aware that the current NERA position as outlined is very likely to change in the event of the introduction of legislation. NERA will publish any updates as they become available.

#### **What are Employment Regulation Orders (EROs)?**

EROs were Statutory Instruments setting the statutory minimum pay (including overtime rates and premium rates for night/weekend work) and statutory conditions of employment in certain sectors. EROs were agreed by Joint Labour Committees and promulgated by the Labour Court.

#### **What is the effect of the High Court Decision of July 7<sup>th</sup> 2011 in Relation to EROs?**

The Judgement of Mr. Justice Feeney, delivered on the 7<sup>th</sup> of July 2011, declaring that the provisions of sections 42, 43, and 45 of the 1946 Industrial Relations Act and section 48 of the 1990 Act are invalid having regard to the provisions of Article 15.2.1 of the Constitution of Ireland, means that EROs in place on 7<sup>th</sup> July, ceased to have statutory effect from that date.

#### **Will NERA be carrying out inspections to check compliance with EROs?**

NERA cannot, as a result of the High Court decision, enforce the minimum pay and conditions of employment prescribed in EROs in force at the time of the High Court decision. NERA inspections in areas formerly covered by EROs will check for compliance with the Minimum Wage, Payment of Wages, Organisation of Working Time, Protection of Young Persons, Employment Permits and other relevant employment legislation.

#### **What will happen where NERA has already commenced an inspection and associated enquiries to check compliance with an ERO?**

In such circumstances NERA's compliance checks will continue to focus on employment rights and obligations under Payment of Wages, Organisation of Working Time, Protection of Young Persons, Employment Permits and other relevant legislation while minimum wage checks will be governed by the provisions of the National Minimum Wage Act or, in the case of certain sectors such as Construction, Electrical Contracting and Printing, the relevant Registered Employment Agreement.

**What will happen where NERA has commenced prosecution proceedings in relation to non-compliance with an ERO?**

Where prosecutions for non-compliance with an ERO have been commenced these will be withdrawn. No further prosecutions will be initiated in relation to compliance with EROs that were in place prior to July 7<sup>th</sup> 2011. Where a prosecution has been initiated under separate legislation not affected by Justice Feeney's Judgement these will be progressed in the normal way.

**Will legislation be introduced to replace EROs?**

Whether or not legislation to replace the EROs is introduced and how it would be enforced is a matter for the Minister for Jobs, Enterprise and Innovation and the Government.

**Can an employer reduce the wages of an employee who was subject of an ERO up to July 7<sup>th</sup> 2011?**

An employee's rate of pay is a term/condition of their contract of employment (employees have a contract of employment or terms of employment whether notified in writing or not).

Any change in an employee's terms or conditions of employment would normally be by agreement between the parties. Such agreement can be expressed or implied, tacit or by acquiescence (i.e it can be formally agreed, informally or verbally agreed or accepted by the employee).

It is advisable to seek professional advice on unilateral changes to terms of employment.

**What options are available to an employee when an employer applies a reduction in pay without agreement?**

Any dispute arising in relation to the operation of employment contracts/conditions falls to be settled either between the parties involved or by availing of the State's industrial relations dispute settlement machinery as provided for under the Industrial Relations Acts. In the event of the parties being unable to resolve a dispute relating to conditions of employment, it is open to the parties to refer the matter to the Labour Relations Commission for investigation under the Industrial Relations Acts (for such an investigation to commence the consent of both parties to participate is required).

The Payment of Wages Act 1991 provides that non-payment of wages or any deficiency in the amount of wages properly payable by an employer to an employee is regarded as an unlawful deduction from wages unless the deficiency or non-payment is attributable to an error of computation.

If an employee considers a reduction in their wages to be an improper deduction from wages or non-payment of wages, the employee may consider referring a complaint to a Rights Commissioner under the Payment of Wages Act

Alternatively if an employee considers a reduction to be a breach of their employment contract they may seek redress for breach of contract in the civil courts.

## **Now that the EROs are no longer law is an employee entitled to a premium for working on a Sunday or Overtime?**

Section 14 of the Organisation of Working Time Act 1997 sets out statutory rights for employees in respect of Sunday working. Any employee who is required to work on a Sunday and, his or her having to work on that day has not been taken account of in the determination of pay, shall be compensated as follows:

- By the payment to the employee of a reasonable allowance having regard to all the circumstances
- Or by increasing the employee's rate of pay by a reasonable amount having regard to all the circumstances
- Or by granting the employee reasonable paid time off from work having regard to all the circumstances
- Or by a combination of two or more of the above means.

Is the employee entitled to overtime rates or other premium rates?

There is no legislation setting an overtime rate of pay. Where an overtime rate of pay is set as part of the contract of employment or where other premium rates are part of the contract of employment see the question, *Can an employer reduce the wages of an employee who was subject of an ERO up to July 7<sup>th</sup> 2011*, above.

In certain industries covered by REAs Sunday, overtime and other premia apply.

### **How can I get further information?**

By contacting NERA:

**NERA National Employment Rights Authority,**  
O'Brien Road, Carlow.  
Telephone: (059) 917 8800, Fax: (059) 917 8912  
Log onto [www.employmentrights.ie](http://www.employmentrights.ie)

#### **Information Services**

Telephone: (059) 917 8990,  
\*Lo-Call: 1890 80 80 90  
Log onto [www.employmentrights.ie](http://www.employmentrights.ie)

\*Callers should note the rates charged for the use of the 1890 (Lo-Call) numbers may vary among different service providers.