

High Court Decision Strikes Down Employment Regulation Orders (EROs)

Mr Justice Feeney delivered a judgement in the High Court on the 7th 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. This means that EROs in place on 7th July, 2011 no longer have the force of law and cannot be enforced.

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.

Where inspections had commenced in employments which were subject to an ERO, these inspections will now be concluded by checking for compliance with 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. In the case of certain sectors such as Construction, Electrical Contracting and Printing, compliance will be measured against the relevant Registered Employment Agreement.

You can get further information by contacting NERA using our contact details at the end of this Update. A detailed list of frequently asked questions on the matter is available on the NERA website at the link below or by contacting our office.

<http://www.employmentrights.ie/en/media/FAQ%20ERO%20High%20Court%20Ruling%2013July2011.pdf>

CROSS AGENCY AND CROSS DEPARTMENTAL COOPERATION

In 2010 NERA took a pro-active approach in identifying specific, practical areas in which it could assist other agencies. Working in collaboration with colleagues in the Employment Appeals Tribunal (EAT) and the Labour Relations Commission (LRC), two areas of particular need were identified.

Since February 2011 NERA carries out the acknowledgement phase in the EAT's process and inputs applications for the Rights Commissioner Service to their case management system. This has assisted both agencies to deal with the backlog of cases they are experiencing.

In addition NERA continues to support the Department of Social Protection in the provision of information in relation to redundancy to employers and employees.

These are good examples of making best use of limited resources through joined up Government with the aim of improving services.

NERA'S SECURE DOCUMENT TRANSFER FACILITY

NERA has introduced a facility to assist our customers to transfer sensitive records and data electronically in a secure and confidential manner and in compliance with Data Protection legislation. This secure facility enhances the protection of personal information provided to NERA in the course of inspections or for other purposes. It is a dedicated email facility for the transfer of documentation by NERA's clients. This email facility is fully secure and facilitates NERA clients to safely transmit confidential documents to NERA over the internet using encryption and without the need to install software or create firewall or bypass rules.

The facility will be particularly useful to employers who may be required to submit further records and/or documentation in follow up to a NERA inspection. It could substantially reduce this task by allowing data to be transmitted securely "at the touch of a button"

Anyone wishing to use the service should contact the relevant NERA official - usually the NERA Inspector dealing with your case - to arrange for the secure upload. Details of how the facility works is available on the NERA website or from our offices or by clicking on the link below.

http://www.employmentrights.ie/en/media/NERA_Document_Transfer_Facility_Leaflet.pdf



NERA INSPECTION SERVICES

To end June 2011, NERA Inspectors concluded, a total of 2,359 inspections of individual employers, and unpaid wages due to employees totalling €1.067m were recovered. This compares with 3,032 inspections concluded and €538k unpaid wages recovered for the same period in 2010.

The tables below provide a breakdown of NERA's provisional inspection figures for the period January to June 2011. **Table 1** gives a breakdown of inspections conducted within the industry sectors governed by Employment Regulation Orders (EROs)¹ or Registered Employment Agreements (REAs).

These industry-specific orders and agreements cover minimum rates of pay and other conditions of employment for these industries.

Table 2 gives a breakdown of inspections conducted under general employment rights legislation. It should be noted that the two categories are not mutually exclusive and that each of the industries are also covered by general employment legislation. In almost all cases, inspections are carried out under more than one piece of legislation. The figures given for the percentage of compliance are based on the number of inspections concluded under general employment rights legislation.

Table 1

SUMMARY OF INSPECTIONS AND COMPLIANCE RATE BY EMPLOYMENT REGULATION ORDERS AND REGISTERED EMPLOYMENT AGREEMENTS – TO JUNE 30TH 2011

| Sector | No of Inspections | Compliance Rate (%) | Unpaid Wages Recovered (€) |
|-------------------|-------------------|---------------------|----------------------------|
| Agriculture | 33 | 42% | 87,771 |
| Catering | 207 | 26% | 149,162 |
| Retail grocery | 112 | 28% | 234,476 |
| Hotels | 96 | 26% | 210,062 |
| Contract Cleaning | 20 | 55% | 10,215 |
| Security | 27 | 48% | 42,515 |
| Construction | 261 | 61% | 163,868 |
| Electrical | 28 | 54% | 17,008 |
| Other | 26 | 42% | 10,366 |

Table 2

SUMMARY OF INSPECTIONS AND COMPLIANCE RATE BY EMPLOYMENT LEGISLATION – TO JUNE 30TH 2011

| Legislation | No of Inspections Concluded | Compliance Rate (%) | Unpaid Wages Recovered (€) |
|-----------------------------|-----------------------------|---------------------|----------------------------|
| National Minimum Wage | 527 | 49% | 141,187 |
| Protection of Young Persons | 1,022 | 100% | 0 |

¹ These inspections were concluded prior to the decision delivered by Mr Justice Feeney in the High Court on the 7th of July 2011 which found that the ERO system was unconstitutional. See <http://www.employmentrights.ie/en/media/FAQ%20ERO%20High%20Court%20Ruling%2013July2011.pdf>

SUMMARY OF PROSECUTION ACTIVITY

NERA aims to achieve voluntary compliance and our priority is to have any breaches identified rectified and to have any sums of money due to employees paid. However, some employers either refuse or fail to rectify the breaches identified and/or pay money due to their employees. These employers are referred for prosecution.

A total of 74 employers were referred for prosecution in the period from January to June 2011, exactly the same number of employers were referred for prosecution during the same period in 2010. Of those cases referred for prosecution 44 were referred on foot of NERA inspections while the remaining 30 were referred due to non-compliance with Labour Court Orders.

A significant number of court cases were adjourned in sectors covered by EROs and in the electrical sector due to High Court challenges in the last two years. These cases were reviewed by NERA following the High Court Judgement of July 7th. This resulted in over 50 cases being withdrawn.

SUMMARY OF ENFORCEMENT ACTIVITY

In certain cases where employers fail to honour awards of either the Labour Court or the Employment Appeals Tribunal, NERA on behalf of the Minister, can bring proceedings through the Civil Courts for enforcement of the awards. NERA is receiving a significant increase in requests to enforce such awards.

A total of 55 such cases were concluded in the period from January to June 2011. This compares to 39 concluded in the entirety of 2010. A further 82 cases are currently being processed. The increase in applications for enforcement of awards reflects the general increase in the number of cases being presented to the employment rights bodies and an increase in the number of employers unwilling or unable to implement awards of the employment rights bodies.

As a matter of policy all employers who refuse or fail to pay such an award are investigated by NERA Inspectors.

NERA INFORMATION SERVICES

NERA Information Services dealt with 58,514 telephone enquiries during the period to end June 2011, a decrease of about 7% on the same period in 2010. A total of 6,514 email enquiries were dealt to the end of June 2011, compared with 7,291 in the same period in 2010.

NERA WEBSITE

(WWW.EMPLOYMENTRIGHTS.IE)

NERA's website, www.employmentrights.ie, continues to be accessed by large numbers of people seeking employment rights information. Just under 648,000 web pages were visited by 149,966 visitors in the period January to June 2011, 58% of these visitors were new and 42% were return visitors.

Over the period to January to June 2011 the top five most popular guides downloaded from www.employmentrights.ie were:

- 1 Holidays and Public Holidays-Organisation of Working Time Act, 1997
- 2 Protection of Employees (Part-Time Work) Act 2001
- 3 The Organisation of Working Time Act, 1997
- 4 Payment of Wages Act, 1991
- 5 Unfair Dismissals Acts, 1977 to 2007

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Contact NERA

National Employment Rights Authority

**O'Brien Road
Carlow
Ireland**

**Telephone: (059) 917 8800
Fax: (059) 917 8912
www.employmentrights.ie**

**NERA Information Service
Telephone: (059) 917 8990
Lo-Call: 1890 80 80 90
Fax: (059) 917 8909**

**NERA Inspection Service
Telephone: (059) 917 8900
Lo-Call: 1890 220 100**

**NERA Enforcement and Prosecution Services
Telephone: (059) 917 8890
Lo-Call: 1890 220 200**

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