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# CRITICAL ASPECTS OF EMPLOYMENT LAW

**Presentation by:**

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# EMPLOYMENT EQUALITY ACT

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## SCOPE:

- Gender
- Marital Status
- Family Status
- Sexual Orientation
- Age
- Disability
- Race
- Religion
- Membership of the traveller community

# EQUALITY

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- No requirement to recruit, promote or retain if:
  - Person cannot do the terms and conditions attached to job *or*
  - is not fully competent and available to undertake the duties of the position
- A person with a disability will be regarded as fully capable if they can undertake job with some facilitation

# HOLIDAYS

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## Organisation of Working Time Act, 1997

### □ Entitlement:

4 Working Weeks (1365 hours)

1/3 Working Week (117 hours)

8% of total hours worked (max 4 weeks)

# PUBLIC HOLIDAYS

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- ❑ Nine Statutory Public Holidays
- ❑ Different to Bank Holidays
- ❑ Full-time v Part-time / Casual
- ❑ 4 Options in giving entitlement

# MATERNITY LEAVE

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## Maternity Protection Acts, 1994-2004

Currently 26 Weeks maternity leave - Social Welfare

- Option of 16 weeks additional unpaid leave
- 2 Weeks taken before birth / 4 weeks after
- Natal Care Leave
- Leave for Fathers
- Statutory & Contractual Rights protected

# MATERNITY LEAVE

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- Ante natal classes - paid
- Hospitalisation of Child
- Additional maternity leave & sickness
- Breastfeeding - 26 weeks
- Rights on additional maternity leave

# PARENTAL LEAVE – CURRENT SITUATION

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- 14 Weeks** unpaid leave for each child, leave must be taken before the child reaches 8 years of age\*
- The 14 weeks may be taken in a continuous block, or in separate blocks of a minimum period of 6 weeks (more fragmented with employer consent)
- 1 year continuous service\*
- 6 weeks** written notification
- Confirmation document signed **4 weeks** before taking the leave

# PARENTAL LEAVE – POSTPONEMENT

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Postponement for up to 6 months if it would have a substantial adverse effect on business due to:

- unavailability of replacement
- numbers taking leave
- other relevant factors
- seasonal variation** – postponement for two periods of 6 months

# CARER'S LEAVE ACT, 2001

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- ❑ 104 weeks leave to look after someone who is in need of full-time care
- ❑ 12 months continuous service
- ❑ “Relevant Person”
- ❑ DSCFA Deciding Officer
- ❑ Carer's Benefit

# PART-TIME WORK ACT, 2001

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- ❑ Part-time employees should not be treated in less favourable manner to that of comparable full-time employees
- ❑ Statutory and contractual/voluntary “company” benefits
- ❑ Discrimination only on objective grounds
- ❑ Pro-rata application of entitlements

# COMPASSIONATE LEAVE

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- No legal entitlement – commonly given due to nature of leave
- Paid time off given to an employee on the death of a family member
- Immediate family members / extended family members

# SICK LEAVE

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- No legal obligation to provide sick pay
- Contract provision / Custom & Practice
- Social Welfare disability Benefit
- Waiting Days
- Certification
- Control Mechanisms

# UNFAIR DISMISSALS ACTS

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Who is covered?

1 years continuous service

(except for pregnancy or trade union activity)

Are aged over 16 years

claim within 6 months

# UNFAIR DISMISSALS ACTS

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## “Fair” grounds for dismissal:

- capability
- competence/qualifications
- conduct
- redundancy

# UNFAIR DISMISSALS ACTS

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## Rules of Natural Justice:

- Details of Allegations or Complaints put to employee
- Opportunity to reply
- Opportunity to avail of representation
- Fair and impartial determination of issues being investigated
- Right of Appeal

# UNFAIR DISMISSALS ACTS

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## Remedies:

- Re-instatement
- Re-engagement
- Compensation - max 2 years remuneration

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# Employment Law Compliance Bill

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# OVERVIEW

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- ❑ Where did it come about?
- ❑ Main measures proposed in bill
- ❑ Concerns from SFA
- ❑ Where do we go

# Emp Law Compliance Bill

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- ❑ Towards 2016 – Section 8 Employment Law & Compliance
- ❑ Consensus general broad compliance across the economy – partners gave a commitment to secure better compliance with legal requirements and underpinned by adequate enforcement

# Emp Law Compliance Bill

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- Major package of measures agreed including:
  - New office of Director for Employment Rights Compliance
  - Working together for compliance
  - New approach to obtaining compliance
  - Strengthening Penalties & Redress

# Emp Law Compliance Bill

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❑ March 2008 – Bill Launched

## Main Provisions

❑ Establishment of NERA

❑ Strengthening powers of inspection

❑ Protection of Whistleblowers

❑ Increased fines

# Emp Law Compliance Bill

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- ❑ Strengthening powers of Minister
- ❑ Co-operation at workplace level
- ❑ Comprehensive list of documents which must be kept

# Emp Law Compliance Bill

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- ❑ No provisions make any allowance for small firms
- ❑ T 16 – 2 stage process
  - Refer to Rights Commissioner
  - NERA have option to commence prosecution \*/or inform parties in breach if issue not dealt with in correct time frame
- ❑ Bill confers powers to NERA not outlined in T16

# Emp Law Compliance Bill

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- ❑ Bill places primacy on criminal and enforcement procedures and does not reflect the SP view of deal at local level if not to RC

# Emp Law Compliance Bill

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## ☐ Notices to be displayed (Part 3)

- Inconsistent with T16
- Appears to require employer to draft legal documents (NERA)
- Translate – unlimited languages – expensive and ambiguity (oral v written) - Minister
- Communication – notice boards/email
- Criminal Offence – use civil redress

# Emp Law Compliance Bill

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## ❑ Inspection (Part 4)

- More power than agreed in T16
- No time limit as long as its “reasonable”
- Unannounced inspections – no restrictions
  - ❑ Issues for small firms - reputation
  - ❑ Only where reasonable cause/might lead to false records

# Emp Law Compliance Bill

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## ❑ Statutory Employment Records

- Propose – 3yrs or duration of emp (longer) & 2 yrs following termination
- Contrary to other legislation – not repealed
- Criminal offence – TUPE
- T16 limited to payroll and working time
- No transition time
- Copy of passport

# Emp Law Compliance Bill

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- ❑ Document on cessation of employment
  - Provide statement in prescribed form
  - Includes job description

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