
PROTECTION OF EMPLOYMENT (PLATFORM WORKERS AND BOGUS SELF-EMPLOYMENT) BILL 2021

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ACT REFERRED TO

Terms of Employment (Information) Act 1994 (No. 5)

Workplace Relations Act 2015 (No. 16)

PROTECTION OF EMPLOYMENT (PLATFORM WORKERS AND BOGUS SELF-EMPLOYMENT) BILL 2021

Bill

entitled

An Act to declare the relationship between employer and employee to be a status relationship, to declare the question whether an individual is an employee or is self-employed to be a question of law to be independently determined, to provide that the description given by the parties shall not be conclusive in determining the true status of an employment relationship, to provide for a presumption in favour of employee status in certain cases, to clarify the employment status of individuals who undertake personally to execute work or service for third parties, to take certain measures to counter the misrepresentation of the status of employees, to amend the Terms of Employment (Information) Act 1994, and to provide for related matters.

Be it enacted by the Oireachtas as follows:

Application of Act

1. (1) The object of this Act is to clarify for the general purposes of the law the distinction between employment and self-employment.
- (2) Save where the contrary intention appears in another enactment, this Act applies where, for the purposes of any enactment or rule of law (including those relating to tax, social welfare and social insurance), it falls to be determined whether an individual executing work or a service for a person under a contract is doing so as an employee or is self-employed.

Presumption of employment

2. Where for the purposes of any enactment or rule or law the employment status of an individual falls to be determined, it shall be presumed that an individual who executes work or a service for a person under a contract is an employee of the person, until the contrary is shown.

Employment relationship: interpretation

3. (1) Subject to *subsection (2)*, an individual is an employee, and an employment relationship exists, where the individual enters into or works under –
 - (a) a contract of service or apprenticeship, or
 - (b) any other contract whereby the individual undertakes personally to execute any work or service for a third person, whether or not the third person is a party to the contract,

whether the contract concerned is made before or after the passing of this Act, is express or implied and, if express, whether it is oral or written.

(2) *Subsection (1) (b)* –

- (a) includes but is not confined to cases where a party to the contract provides an online platform which enables the individual to execute work or services on demand, in return for payment,
- (b) does not apply where the status of the third person by virtue of the contract is that of a client or customer of a profession or business being carried on by the individual on his or her own account.

Employment relationship: a status relationship governed by law

4. (1) The employment relationship is a status relationship; the creation, continuance, termination and other incidents of the relationship are accordingly governed by law, and not purely by agreement between the parties.

(2) The question whether an individual who executes work or a service for a person under a contract is an employee of that person or is self-employed –

- (a) shall be determined by identifying the actual relations between the parties, and the relevant conditions and circumstances attaching to those relations, and
- (b) shall, if the form of any agreement or arrangement between the parties is inconsistent with the substance of those relations, be based on the substance.

(3) For the purposes of determining whether an employment relationship exists –

- (a) an agreement, decision, transaction, course of action or conduct or arrangement purporting to define or govern the individual's status, or to evidence the belief or intention of the individual or of other persons in relation to that status, is not conclusive, and
- (b) any perceived advantage or disadvantage to a party or parties arising from the determination, in relation to –
 - (i) liability to tax or to social insurance contributions, or
 - (ii) the applicability of enactments or rules of law for the protection of employees,

shall, save to the extent that it may provide a motive for misrepresenting the nature of the agreement, be disregarded.

(4) Where an individual executes work or a service for a person under a contract, an employment relationship may be held to exist notwithstanding that –

- (a) the individual is an employee also of another person,

- (b) the individual is also, in respect of other work or another service being executed by him or her, self-employed,
- (c) the individual works as an outworker or teleworker,
- (d) the individual does part-time work, temporary work, seasonal work or occasional work,
- (e) the remuneration of the individual is calculated by reference to the amount of work actually done, or
- (f) the hours of work or remuneration of the individual are otherwise uncertain.

Self-employment tests

5. (1) Where an individual executes work or a service for a person under a contract, the individual shall be held to be self-employed if he or she executes the work as someone in business “on their own account”, that is to say, as a free agent with economic independence of the person.
- (2) In determining if an individual executes work or a service for a person under a contract is self-employed, regard shall be had, where relevant, to whether the individual –
- (a) owns his or her own business,
 - (b) is exposed to financial risk by having to bear the cost of making good faulty or substandard work carried out under the contract,
 - (c) assumes responsibility for investment in or management of an enterprise or undertaking,
 - (d) has the opportunity to profit from sound management in, for example, the scheduling and performance of engagements and tasks,
 - (e) has control over what work is done, how it is done, when and where it is done and whether he or she does it personally,
 - (f) is free to hire other people, on his or her terms, to do the work which has been agreed,
 - (g) is free to execute the same work or service to more than one person,
 - (h) provides the materials for the work,
 - (i) provides equipment and machinery necessary for the job, other than small tools of the trade or other equipment which would not generally be an indicator of a person in business on their own account,
 - (j) has a fixed place of business where materials, equipment and the like can be stored,

- (k) is free to cost and agree a price for the work,
- (l) provides his or her own public liability or other appropriate insurance cover,
- (m) controls the hours worked to fulfil the contractual obligations.

Amendment of Terms of Employment (Information) Act 1994

6. Section 3 (1A) of the Terms of Employment (Information) Act 1994 is amended by inserting the following after paragraph (d):

“(da) where section 3 (1) (b) of the *Protection of Employment (Platform Workers and Bogus Self-Employment) Act 2021* applies –

- (i) details of the operation of any automated process maintained by the employer for allocating work between available employees, and
- (ii) details of any system maintained by the employer for using customer reports or reviews in connection with the future allocation or remuneration of work;”.

Disputes

7. (1) An individual who is party to a contract under which work or a service is executed for a person, or a trade union of which the individual is a member, with the consent of the individual, may refer a dispute as to whether an employment relationship exists to the Director General of the Workplace Relations Commission.
- (2) Where a dispute is referred under *subsection (1)*, it shall be treated as a dispute referred under section 41 of the Workplace Relations Act 2015 and Part 4 of that Act shall, with any necessary modifications, apply accordingly.
- (3) A decision on a dispute referred under *subsection (1)* shall do one or more of the following, namely –
- (a) declare that an employment relationship exists or, as the case may be, does not exist,
 - (b) require an employer to take a specified course of action (including making any necessary adjustment to the employee’s terms and conditions of employment, or to tax and social insurance arrangements made by the employer in relation to the employee), or
 - (c) require an employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances but not exceeding 2 years remuneration in respect of the employee’s employment.
- (4) This section is without prejudice to the application of any other provision of this Act, by any court or tribunal, to the circumstances of a case before that court or tribunal.

Short title

8. This Act may be cited as the Protection of Employment (Platform Workers and Bogus Self-Employment) Act 2021.