



**An Bille um Eagrú Ama Oibre (Leasú) (Cearta Oibrithe agus
Féinfhostaíocht Bhréige) 2019**

**Organisation of Working Time (Amendment) (Workers Rights and Bogus
Self-Employment) Bill 2019**

Mar a tionscnaíodh

As initiated



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ACT REFERRED TO

Organisation of Working Time Act 1997 (no. 20 of 1997)

Protected Disclosures Act 2014 (no. 14 of 2014)



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FÉINFHOSTAÍOCHT BHRÉIGE) 2019
ORGANISATION OF WORKING TIME (AMENDMENT) (WORKERS RIGHTS AND
BOGUS SELF-EMPLOYMENT) BILL 2019**

Bill

entitled

An Act to amend the Organisation of Working Time Act 1997 to prohibit the practice of designating employment as self-employment; to bring the Garda Síochána, the Defence Forces, and doctors in training, under the protection of the Act; to limit the race to the bottom on workers rights by extending elements of the Act to the self-employed; and to provide for related matters.

Be it enacted by the Oireachtas as follows:

Definition

1. In this Act, ‘Principal Act’ means the Organisation of Working Time Act 1997.

Amendment of Section 3 of the Principal Act

2. The Act of 1997 is amended by the deletion of the following words in subsection (3)(1): ‘a member of the Garda Síochána or the Defence Forces’; and by the deletion of subsection (3)(2)(a).

Amendment of Section 34 of the Principal Act

3. Section 34 of the Principal Act is amended -
 - (a) by the substitution of the following subsection for subsection (1):

“(1) A person guilty of an offence under this Act shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or to both.”

and

(b) by the substitution of the following subsection for subsection (3):

“(3) If the contravention in respect of which a person is convicted of an offence under this Act is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence the person shall be liable, on summary conviction, to a fine not exceeding €5000.”

The Principal Act is amended by the insertion of the following section after section 8:

Ascertainment of a Contract of Employment

4. “8A. (1) Employers cannot avoid an employer-employee relationship by drafting contracts, explicitly or implicitly, that do not accord with the reality of the relationship.

(2). a contract of employment can be said to exist if-

- (a) an individual agrees that in consideration of a wage or other remuneration he or she will provide their own work and skill in the performance of some service for an other;
- (b) that individual agrees, explicitly or implicitly, that in the performance of that service he or she will be subject to the other’s control in a sufficient degree to make that other the employer;
- (c) the other provisions of the contract are consistent with its being a contract of employment.

Factors to Determine a Contract of Employment

5. (3) Without prejudice to the generality of *subsection (2)*, and while all of the following factors may not apply in each case, when determining the existence of a contract of employment, regard may be had for the following:

- (a) the degree of autonomy and control that the individual performing the work has over the tasks to be performed and how and when they are to be performed;
- (b) the relative bargaining power of the parties;
- (b) that the individual executes for another person under a contract (whether express or implied and if express, whether orally or in writing), the same work or service as an employee of the other person would do,

- (c) that the individual has a relationship of subordination in relation to the other person for the duration of the contractual relationship,
- (d) that the individual is required to follow the instructions of the other person regarding the time, place and content of his or her work,
- (e) that the individual does not share in the other person's commercial risk,
- (f) that the individual has no independence as regards the determination of the time schedule, place and manner of performing the tasks assigned to him or her.
- (g) that the individual receives a wage or other remuneration.

Ascertainment of a Contract of Service

6. (4)(1) For the purpose of this Act a contract for service applies in the case of a self-employed individual and can be said to exist where where an individual agrees personally to execute any work or service for a person whose status by virtue of the contract is that of a client or customer of a profession or business undertaking being carried on by the individual on his or her own account.

Factors to Determine a Contract of Service

7. (5) Without prejudice to the generality of *subsection (1)*, and while all of the following factors may not apply in each case, when determining the existence of a contract for service, regard may be had for the following with the regard the status of self-employed, namely that the individual -

- (a) owns their own business,
- (b) is exposed to financial risk,
- (c) assumes responsibility for investment and management in the business,
- (d) can profit from the management, scheduling or performance of the work,
- (e) has control over what, how, when and where the work is done and whether they do it personally
- (f) is free to hire other people, on their terms, to do the work which has been agreed upon,
- (g) can provide the same services to more than one person or business at the same time,
- (h) provide the materials for the job,
- (i) provide equipment and machinery necessary for the job,

(j) has a fixed place of business where materials or equipment can be stored

(h) can cost and agree a price for a service,

(i) can control the hours of work in fulfilling the job obligations.

Offence of Bogus Self-Employment

8. (6) An employer who is found to have produced a contract that does not accord with the reality of the employer-employee relationship, and by doing so has designated an employee as self-employed, shall be guilty of an offence under this Act.

(a) An individual on a contract that reports a suspected occurrence of *section 6* to a trade union, the Revenue Commissioners, or to the Department of Social Protection, shall be accorded the same protections as those of a protected disclosure as outlined in part 3 of the Protected Disclosures Act 2014.

Extension of Certain Employee Entitlement to Self-Employed Individuals

9. (7) Notwithstanding section 4 and section 5, an individual who is subject to a contract for service shall nonetheless be deemed an employee for the purposes of -

(a) section 11 of the principal Act,

(b) section 12 of the principal Act,

(c) section 13 of the principal Act,

(d) section 15 of the principal Act,

(e) section 16 of the principal Act,

(f) section 19 of the principal Act,

(g) section 20 of the principal Act.

(h) section 21 of the principal Act,

(i) section 22 of the principal Act.

Short Title

10. This Act may be cited as the Organisation of Working Time (Amendment) (Workers Rights and Bogus Self-Employment) Bill 2019.