



STATUTORY INSTRUMENTS.

**S.I. No. 217 of 2009**

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EMPLOYMENT REGULATION ORDER [CATERING JOINT LABOUR  
COMMITTEE (FOR THE AREAS OTHER THAN THE AREAS KNOWN  
UNTIL 1ST JANUARY, 1994 AS THE COUNTY BOROUGH OF  
DUBLIN AND THE BOROUGH OF DUN LAOGHAIRE)], 2009

EMPLOYMENT REGULATION ORDER [CATERING JOINT LABOUR COMMITTEE (FOR THE AREAS OTHER THAN THE AREAS KNOWN UNTIL 1ST JANUARY, 1994 AS THE COUNTY BOROUGH OF DUBLIN AND THE BOROUGH OF DUN LAOGHAIRE)], 2009

WHEREAS the Labour Court (hereinafter called “the Court”), pursuant to the provisions of the Industrial Relations Acts, 1946-2004, made an Employment Regulation Order dated 12th May, 2008 (S.I. No. 142 of 2008) (hereinafter called “the said Order”) fixing the statutory minimum rates of remuneration and regulating the statutory conditions of employment of workers in relation to whom the Catering Joint Labour Committee (for the areas other than the areas known until 1st January, 1994 as the County Borough of Dublin and the Borough of Dun Laoghaire) (hereinafter called “the Committee”) operates.

AND WHEREAS the Committee has submitted to the Court a proposal for revoking the said Order;

AND WHEREAS the Committee has also submitted to the Court the proposals set out in the Schedule hereto for fixing the statutory minimum rates of remuneration and regulating the statutory conditions of employment of workers in relation to whom the Committee operates.

AND WHEREAS the provisions of Section 48 of the Industrial Relations Act, 1990 have been complied with;

NOW, THEREFORE, the Court, in exercise of the powers conferred on it by Section 43(4) of the Industrial Relations Act, 1946 and by Section 48(4) of the Industrial Relations Act, 1990 hereby Orders as follows—

(1) This Order may be cited as the Employment Regulation Order [Catering Joint Labour Committee (for the areas other than the areas known until 1st January, 1994 as the County Borough of Dublin and the Borough of Dun Laoghaire)], 2009.

(2) Effect is hereby given to the proposals set out in the Schedule hereto.

(3) The provisions set out in the Schedule hereto shall have effect as from 29th June, 2009 and as from that date the said Order shall be revoked.

**Note:** Enquiries should be addressed to **The Secretary, Joint Labour Committees, The Labour Court, Tom Johnson House, Haddington Road, Dublin 4** (Telephone 01-6136666, Extension Nos. 6639, 6641 and 6642. “Lo-call” number (if calling from outside (01) area) 1890 220 228).

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 19th June, 2009.*

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## PART 1 — Scope and Definition

## 1. Workers to whom this Order applies

This Order shall apply to workers employed in a catering establishment anywhere throughout the State except Dublin and Dún Laoghaire who are engaged on any of the following work, that is to say:-

- (a) the preparation of food or drink;
- (b) the service of food or drink;
- (c) work incidental to (a) or (b) and performed at any store or warehouse or similar place in the catering establishment.

## 2. Exclusions from scope of this Order

This Order shall not apply to

- (a) workers affected by any employment agreement,
- (b) workers to whom an Employment Regulation Order, made as a result of proposals received from a Joint Labour Committee other than the Catering Dublin and Dun Laoghaire Joint Labour Committee, applies,
- (c) managers, assistant managers and trainee managers.

## 3. Definitions

In this Schedule

- (a) “*Catering Establishment*” means a premises in respect of which a publican’s licence (spirit retailers on-licence) under the Licensing Acts, 1833 to 1995, is held and which serves hot food for consumption on the premises, and a premises or part of a premises primarily used for supplying for reward to any persons, not for the time being resident on the premises, food or food and drink for consumption on the premises, including fish and chip shops and ice cream parlours, but excluding
  - (i) premises registered in the register of hotels, under the provisions of the Tourist Traffic Acts, 1939 — 2003.
  - (ii) premises licensed under the Licensing Acts, 1833 — 1995 and having not less than 10 apartments normally available for the sleeping accommodation of travellers.
- (b) “*Dublin*” means the area known until 1st January, 1994 as the County Borough of Dublin.

- (c) “*Dún Laoghaire*” means the area known until 1st January, 1994 as the Borough of Dún Laoghaire.
- (d) “*Employment agreement*” means an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union of workers and an employer or trade union of employers or made, at a meeting of a registered joint industrial council, between members of the council representative of workers and members of the council representative of employers.
- (e) “*Training*” means training as provided for in Section 16 of the National Minimum Wage Act, 2000.

## PART 2 — Pay

### 4. Definitions of Job Classes

The definitions of the job classes for which minimum rates of pay are set in Paragraph 5 are included in the Annex to this Schedule.

### 5. Minimum Weekly Rates of Pay

#### A. CHEF / COOK

##### From 29th June 2009

<i>During First Year of Training</i> (75% of Full Rate)	€278.03
<i>During Second Year of Training</i> (80% of Full Rate)	€296.56
<i>During Third Year of Training</i> (90% of Full Rate)	€333.63
<i>Trained</i> (Full Rate)	€370.70
<i>Under 18 Years of Age</i> (70% of Full Rate)	€259.49

#### B. HEAD CHEF / COOK

From 29th June 2009	€386.96
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#### C. 2nd HEAD CHEF / 2nd COOK / SOUS CHEF

From 29th June 2009 <i>Full Rate</i>	€379.19
<i>Twelve Months' Initial Rate</i> (90% of Full Rate)	€341.27

**D. WAITER/WAITRESS/BARPERSON**

From 29th June 2009

<i>During First 8 months of Training</i> (75% of Full Rate)	€272.47
<i>During Second 8 months of Training</i> (80% of Full Rate)	€290.63
<i>During Third 8 months of Training</i> (90% of Full Rate)	€326.96
<i>Trained</i> (Full Rate)	€363.28
<i>Under 18 Years of Age</i> (70% of Full Rate)	€254.30

**E. HEAD WAITER / HEAD WAITRESS / HEAD BARPERSON 2nd  
HEAD WAITER / 2nd HEAD WAITRESS 2nd HEAD BARPERSON**

From 29th June 2009

<i>Full Rate</i>	€363.28
<i>Twelve Months' Initial Rate</i> (90% of Full Rate)	€326.96

**F. CLERICAL WORKER GENERAL WORKER SHORT ORDER / FAST  
SERVICE COOK COUNTER ASSISTANT**

From 29th June 2009

<i>Full Rate</i>	€363.28
<i>Twelve Months' Initial Rate</i> (90% of Full Rate)	€326.96
<i>Under 18 Years of Age</i> (70% of Full Rate)	€254.30

## 6. Provisions relating to Twelve Months' Initial Rate

- (a) Where the rate described as the "twelve months' initial rate" is payable to any class of worker in accordance with the provisions of paragraph 5, that rate shall be calculated at 90% of the appropriate full rate for that class of worker after the appropriate deduction, if any, has been made from that full rate in accordance with the provisions of paragraph 8.

- (b) The twelve months' initial rate applies to workers for the first twelve months of employment in any of the relevant job classes by any employer.
- (c) This rate does not apply, or will cease to apply, two years after the date of an employee's first employment over age 18, irrespective of the employer with whom, or the sector in which, the employee was employed.

#### 7. Part-time or Casual Workers

Any part-time or casual worker shall be paid pro-rata at the hourly equivalent of the weekly rate appropriate to his/her particular class category of employment, as set out in Paragraph 5. The hourly rate is calculated by dividing the relevant full time weekly rate by 39.

#### 8. Board and Lodgings

- (a) If a worker employed in a catering establishment receives board and lodgings, board only or lodgings only from his/her employer, an appropriate amount, as follows, may be deducted from his or her pay:

	<b>Per Week</b>	<b>Per Day</b>
for full board and lodgings	<b>€54.13</b>	<b>€7.73</b>
for full board only	<b>€32.14</b>	<b>€4.60</b>
for lodgings only	<b>€21.85</b>	<b>€3.14</b>

**Where partial board is provided, the employer may deduct €1.53 per meal to a maximum amount of €4.60 per day.**

- (b) In this paragraph,
  - (i) “*full board*” means an entitlement to three (3) meals in any 24 hour period.
  - (ii) “*week*” means a 7 day week.

#### 9. Service Charges and Gratuities

- (a) Service charge, where levied will be distributed among all staff excluding management personnel and trainee managers.
- (b) Service charge will be distributed through the payroll system with pay for the pay period during which the service charge was collected, but not less frequently than on a monthly basis.
- (c) Service charge, when distributed to employees through the payroll system, may be regarded as pay for the purposes of paragraph 5.
- (d) Gratuities and tips shall not be regarded as pay for the purposes of paragraph 5.

10. Overtime

- (a) Overtime shall be paid at the rate of time plus one half for hours worked in excess of the rostered hours on any day or in excess of 78 hours per fortnight.
- (b) Work done on a day on which a worker would normally be off duty, including Sunday, shall be paid for at the rate of double time except where an option to take time off in lieu is agreed between the employer and the worker in writing in advance. In which case the following will apply:
  - (i) Payment at the basic rate for hours worked plus the equivalent paid time off at the basic rate.
  - (ii) Paid time off (paid at the basic rate) for the number of hours equal to twice the number of hours worked on the day in question.
- (c) Each worker shall be made aware of his or her rostered duty one week in advance of the commencement of that rostered duty where reasonably possible. Any hours worked in excess of rostered duty on any day shall be paid for at the overtime rate of time plus one half up to 12.00 midnight, and thereafter at double time.
- (d) Part-time and casual workers will be entitled to overtime on a daily basis after completion of their rostered shift or after 8 hours, whichever is longer.

11. Sunday Work

- (a) Within the 78 hour fortnight, every second Sunday shall be regarded as a day off, except where agreed by both the employer and the employee in writing. In addition, each worker shall be entitled to minimum rest periods in accordance with the provisions of the Organisation of Working Time Act, 1997.
- (b) All workers rostered to work on Sunday, other than on overtime, shall be paid time plus one-third for rostered work.

12. Night Duty

- (a) A worker rostered to work night duty between the hours of 12.00 midnight and 7.00 a.m. which is not overtime and is not covered by a trade union negotiated shift pay agreement, shall be compensated by the payment of an allowance equivalent to 25% of his/her basic pay, for hours worked during that period.
- (b) Paragraph (a) applies only to night time workers as defined in Section 16 of the Organisation of Working Time Act, 1997.



## PART 3 — Minimum Conditions of Employment

## 13. Normal Working Hours

- (a) The normal working fortnight shall be 78 hours for full-time employees aged 18 years and over, over a minimum period of 8 days and a maximum period of 10 days.
- (b) Normally, staff may be rostered for a maximum of 10 hours per day, before overtime, but this may be extended to a maximum of 12 hours, with the agreement of the individual employer and employee.
- (c) Where an employee is employed in more than one employment, he or she shall inform each employer of hours worked in any other employment, to allow the employer to ensure compliance with the provisions of the Organisation of Working Time Act, 1997.
- (d) Subject to sub-paragraph (e), young persons aged 14 and 15 may only be employed on holiday work (maximum of 35 hours per week) or on work experiences (maximum of 40 hours per week). The normal number of hours for young persons on holiday work shall be 70 hours in any fortnight, but must not exceed 35 hours per week, and for young persons on work experience shall be 78 hours in any fortnight, but not exceed 40 hours per week.

The normal number of hours for young persons aged 16 or 17 shall be 78 hours in any fortnight but must not exceed 40 hours in any week. A person who employs a young person to carry out general duties in a licensed premises may require the young person to work up to 11 p.m. on any one day, where—

- (i) The day is not a day immediately preceding a school day during a school term where the young person is attending school, and
  - (ii) The young person is not required or permitted to commence work until 7 a.m. on the following day and shall have regard to the Code of Practice concerning the Employment of Young Persons in Licensed Premises as per S.I. No. 350/2001- Protection of Young Persons (Employment) Act, 1996 (Employment in Licensed Premises) Regulations, 2001.
- (e) In relation to workers under the age of 18, the provisions of the Protection of Young Persons (Employment) Act, 1996 shall apply.

## 14. Annual Leave and Public Holidays

- (a) All employees are entitled to annual leave and public holidays in accordance with the provisions of the Organisation of Working Time Act, 1997.

Entitlements to public holidays are as follows—

Christmas Day, St. Stephen's Day, New Year's Day, St. Patrick's Day, Easter Monday, First Monday in May, First Monday in June, First Monday in August and last Monday in October.

Where a worker is required to work on a public holiday or where a public holiday coincides with a rest day, he/she shall be given either-

- (a) a paid day off on that day, or
- (b) a day off in lieu with pay within a month of that day, or
- (c) an additional day with pay added to his/her annual leave, or
- (d) payment for the day equivalent to twice the amount of a full day's pay.

Payment for public holidays will be calculated in accordance with the provisions of the Organisation of Working Time Act, 1997.

Part-time/temporary/casual employees are entitled to payment for Public Holidays if they have worked 40 hours in the five weeks immediately prior to the day before the Public Holiday.

- (b) Six weeks' notice of intention to allow annual leave shall be given by employers to their workers.
- (c) Where a worker has worked on any public holidays throughout the year, the days off in lieu may be taken consecutively and added to the worker's annual leave.

#### 15. Spadover Duty / Starting and Finishing Time

- (a) The maximum period for spadover duty shall not exceed 13 hours in any day. The maximum number of spadover duties in any fortnight shall be five, subject to a minimum break of 3 hours in each duty or less by agreement between the employer and employee.
- (b) For workers aged 18 years and over, a minimum period of 11 hours shall elapse between a worker's normal finishing time each night and starting time next morning as per the Organisation of Working Time Act, 1997.
- (c) In relation to workers under the age of 18, the provisions of the Protection of Young Persons (Employment) Act, 1996 shall apply.

#### 16. Breaks and Rest Periods

- (a) The provisions of the Organisation of Working Time Act, 1997, shall apply in relation to breaks and rest periods.

- (b) In relation to workers under the age of 18, the provisions of the Protection of Young Persons (Employment) Act, 1996 shall apply.

An employer shall not require an employee to work for a period of more than 4 hours and 30 minutes without allowing him or her a break of at least 15 minutes, which is a paid break.

An employer shall not require an employee to work for a period of more than 6 hours without allowing him or her a break of at least 30 minutes; such a break may include the break referred to above.

No worker over the age of 18 shall be required to work continuously for more than  $4\frac{1}{2}$  hours without a break of at least 15 minutes, exclusive of main meal break.

- (i) Workers under 16 years of age must have the following breaks:

after each 4 hours	half hour
in each period of 24 hours	14 consecutive hours
in any period of 7 days	2 days off

- (ii) Workers over 16 and under 18 years of age must have the following rest breaks:

after each 4 hours	half hour
in each period of 24 hours	12 consecutive hours
in any period of 7 days	2 days off

- (c) These provisions may be modified in relation to employment of close relatives in a family business.

- (d) As far as practicable, the days off are to be consecutive.

## 17. Sick Pay Scheme

The following sick pay scheme shall apply:

- (a) The Sick Pay Scheme will be a non-contributory scheme.
- (b) No payment will be made for the first 3 days of any absence.
- (c) The employer is to be contacted  $1\frac{1}{2}$  hours prior to the employee's normal starting time on the first day of absence.
- (d) A certificate signed by a medical practitioner, specifying the nature of the illness, is required on the third day of absence, and weekly thereafter.
- (e) At the choice of the employer, the sick pay scheme will apply on an annual basis, either from 1st January to 31st December or from 1st April to 31st March, with no transfer of benefit from one year to the next. Individual employees will be eligible for benefit under the scheme after two years' continuous service.

- (f) The Scheme will apply to full-time staff. The scheme will apply to part-time staff on a *pro rata* basis.
- (g) Any employee found to be abusing the Sick Pay Scheme will be subject to the full disciplinary procedures up to and including dismissal.
- (h) The employer will reserve the right to refer an employee for an assessment by the Company doctor/Occupational Health Physician. The employer will meet the cost of the referral.
- (j) The Sick Pay Scheme will not cover absences relating to the following:
  - Traffic accident(s)
  - Substance abuse
  - Dangerous sports (i.e. martial arts, mountaineering, skiing, parachuting, flying as a hobby, hang-gliding)
  - Injuries sustained while working for another employer.
- (k) All staff who qualify will be entitled to 3 weeks basic pay, less any entitlement to social welfare payment, in any one year as set out at (e) above. For part-time staff, pay will be based on the average of the preceding 13 weeks worked. It will be the responsibility of the employee to claim social welfare entitlements while on sick leave.
- (l) Payments will only be made when absence is medically certified.

#### 18. Certificate of Service

Each worker shall be entitled to receive from his or her employer on termination of his or her employment, a certificate of service showing the period of such employment, in each particular grade/position in which he or she may have been employed.

#### 19. Bullying / Harassment / Grievance / Disciplinary Procedures

- (a) Each employer will include, in the conditions of employment, details of the procedures to apply in the event of issues arising in relation to bullying, harassment, grievance and discipline. In this regard, the following Codes of Practice are to be noted:
  - Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000 — S. I. No. 146/2000.
  - Industrial Relations Act, 1990 (Code of Practice Detailing Procedures For Addressing Bullying in The Workplace) (Declaration) Order, 2002— S. I. No. 17/2002.

- Employment Equality Act, 1998 (Code of Practice) (Harassment) Order, 2002 — S. I. No. 78/2002.

- Code of Practice for Employers and Employees on the Prevention and Resolution of Workplace Bullying, published by the Health and Safety Authority, effective 1 May, 2007.

The procedures will also state that an employee may be represented, at any stage of the procedure, by a colleague or Trade Union official of his/her choice.

(b) The following provisions shall apply in the event of a dismissal:

- (i) In the event of a dismissal, the procedures will include the warning stages to apply prior to dismissal and will make reference to verbal and written warnings and to the fact that, depending on the nature of the misconduct/performance, the preliminary stages of the procedures may be bypassed.
- (ii) In the event of a summary dismissal, no decision will be taken until the matter has been fully investigated by management.
- (iii) An employee may wish to challenge a dismissal to a Rights Commissioner, the Labour Relations Commission, the Labour Court, the Equality Authority or the Employment Appeals Tribunal or may pursue the matter under common law.

## 20. Day Release Training

Where a trainee is following a recognised or accredited apprenticeship training course which has as a component a day release element, he or she shall be entitled with pay to attend such course provided day release attendance is certified. Attendance on a day release programme shall be determined as a day worked for the purpose of calculating weekly working hours and statutory entitlements.

## 21. Notice of Termination

Employees will be entitled to receive the appropriate period of notice as set out in the Minimum Notice and Terms of Employment Acts, 1973- 2005. Except in certain circumstances justifying immediate termination of employment by the employer.

# PART 4 — General Provisions

## 22. General

Nothing in this Employment Regulation Order shall be taken to exclude, limit or be in any way inconsistent with the rights of any employee under any statutory enactment.

**Definitions of Job Classes****(a) Chef/Cook**

A person who has completed three years service at cooking duties and is engaged in the preparation and cooking of food for service to the public and / or staff.

**(b) Short Order Cook / Fast Service Cook**

A person who is solely engaged in the preparation and / or cooking of any one or a combination of the following: hamburgers, beefburgers, fish, chips, pizza, pancakes and snack foods.

**(c) Waiter / Waitress**

A person who has completed two years service and is wholly or mainly engaged in the service of food at a table and ancillary duties.

**(d) Barperson**

A person who has completed two years service who is wholly or mainly engaged in the service of alcoholic drinks and other beverages and ancillary duties.

**(e) Counter Assistant**

A person wholly or mainly engaged in the preparation and/or service of food at a counter and ancillary duties.

**(f) Clerical Worker**

A person wholly or mainly engaged in clerical, reception and / or cashier duties.

**(g) General Worker**

A person wholly or mainly engaged in any one, or a combination, of the following:- general kitchen portering duties, the preliminary preparation of food prior to cooking, and other general duties, including cleaning or washing-up duties, not covered in the definitions of the other classes of workers contained in this Annex.

**(h) Part-time Employee**

A part-time employee is an employee whose normal hours of work are less than the normal hours of work of a full-time employee engaged in comparable work.

(j) *Casual Employee*

A casual employee is a part-time employee who works on a casual basis. Under the Protection of Employees (Part-time Work) Act, 2001, a part-time employee is considered as working, at a particular time, on a casual basis if at that time:-

- (i) he or she has been in the continuous service of the employer for a period less than 13 weeks, and that period of service and any previous period of service by him or her with the employer are not of such a nature as could reasonably be regarded as regular or seasonal employment, or
- (ii) he or she fulfils, at that time, the conditions specified in an approved collective agreement (as defined in section 11 (5) of the Act) that has effect in relation to him or her, and regards him or her for the purposes of that agreement as working on a casual basis.

(k) *Period of Service*

The period of service specified in the definitions at (a), (c), and (d) of this Annex shall include time spent on a training course.



GIVEN under the Official Seal of the Labour Court this 15th day of June, 2009.

Signed KEVIN DUFFY  
CHAIRMAN

EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

This Instrument fixes, with effect from 29th June, 2009, statutory minimum rates of remuneration and statutory conditions of employment of certain workers employed in catering establishments in the areas other than the areas known until 1st January, 1994 as the County Borough of Dublin and the Borough of Dun Laoghaire. It is made by the Labour Court on the recommendation of the above mentioned Joint Labour Committee.



BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,  
CONTAE MHAIGH EO,  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)  
nó trí aon díoltóir leabhar.

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