



## **Mandate Trade Union's position on the Employment (Miscellaneous Provisions) Bill 2017**

November 2017

### ***The issue***

Martina is a member of Mandate Trade Union and she works for a major multinational retail outlet. She's been working between 40-48 hours per week for 7 years. Recently Martina complained to her local manager about a stack of pallets blocking the fire exit of her store. Her manager took action. Except, her manager didn't resolve the obstruction to the fire escape. Instead, she cut Martina's hours to the minimum number in her contract, which is 10, as a penalty, and told her she could have her 48 hours back in six months. There is absolutely nothing illegal in this.

This reduction in hours amounted to an 80% cut in income for Martina and she had to go to her local Credit Union to make up for her lost hours and income (her contract forbids her from obtaining work elsewhere). This has made Martina a very compliant worker. Since this incident, Martina has never raised a grievance.

This is not a fictional scenario. This happened, and it is not unusual. It illustrates the level of control that many Irish employers have over their workers. In Dunnes Stores, the second largest private sector employer in the country with 10,000 staff, 85% of respondents to our annual survey said allocation of hours by managers is used as a method of control against them. In a separate survey of workers across the retail sector, 51% said allocation of hours is used by management as a method of control. Lodge a grievance, join a trade union, request the implementation of your minimum statutory rights and you may have your hours cut.

When 6,000 Dunnes Stores workers participated in industrial action on April 2nd, 2015 to highlight this very issue, the very next day their employer slashed workers' hours, making an industrial resolution to this issue close to impossible.

This is why the Employment (Miscellaneous Provisions) Bill 2017 is so important. It is an opportunity for our elected representatives to help protect low paid workers in vulnerable positions.

### ***Societal impacts***

The absence of legislative protections for workers on low hour contracts in Ireland is a major contributor to many of the current crisis facing the country. Retail, bar, restaurant and hospitality workers, among other precarious workers, are all disproportionately impacted by poverty, homelessness and the healthcare crisis.

**Housing:** Due to the fact that workers can only obtain a mortgage based on their guaranteed income, many are stuck in the private rental sector. A Dunnes Stores worker, who may regularly work 38 hours per week on €12 per hour (€456 per week), can only borrow 3.5 times their income off a bank. Because of their 15 hour contract, this equates to €32,760 which is obviously insufficient based on today's house prices. Therefore, they are forced to continue in the private rental sector where they have faced rent increases of up to 82% in recent years. This is one of the main factors behind precarious workers being made homeless.

**Healthcare:** A recent research document produced by TASC entitled ***Precarious Work: Precarious Lives*** explained how precarious work has a negative effect on mental health. "The majority of participants described how their temporary and insecure working conditions caused depression and anxiety because they were unable to plan for the future." Many Mandate Trade Union members are forced to attend work while ill because they fear they will not get their hours the following week if they call in sick. This was highlighted in the recent Lloyds Pharmacy strike where workers attended work while suffering from swine flu, bronchitis and pneumonia. The instability of income also makes it difficult for workers to make the choice between paying to see a doctor and putting food on the table for their families.

**Low Pay:** The flexibility in workers' hours combined with a lack of representational rights in Ireland has contributed to Ireland having among the highest prevalence of low pay, not only in the EU, but also the OECD. This has led to high levels of food poverty, fuel poverty and child poverty. In many instances, when a low paid worker receives a pay increase, they want to reject it. This is because they know their hours will be reduced and their employer will hire a new member of staff on lower rates of pay and it will be those workers who receive additional hours. 89% of Dunnes Stores workers said it is common practice that new staff on lesser terms and lesser rates of pay receive more hours than longer serving staff on better terms.

## ***Banded hours***

Many employer representatives have highlighted their objections to this piece of legislation with bogus concerns.

**Employee flexibility:** One of the most often cited objections to legislating for secure hour contracts is "employees also want flexibility". While this may be the case for a number of workers, the legislation does not prevent employees and employers coming to arrangements as equal parties. There isn't currently a balanced relationship between employers and employees, with the employers holding a disproportionate level of power in the determination of hours. When 1,400 Dunnes Stores workers were asked: "Do you want more stable hours?" 98% said Yes.

Following debates in both the Oireachtas Committee and the Dail a settlement was reached in relation to the width of bands of hours. These bands, as proposed by the Dail, still provide employers with a high level of flexibility. An employee's hours can still be cut by 5 hours per week, which is a significant reduction in income for a worker. For instance, an employee on the 16-21 hours band who is earning the Living Wage

of €11.90 per hour can be cut from €250 to €190 per week. This €60 is a significant amount of money for a low paid worker. For employers' bodies to argue to expand that band to 10 hours (15-25 hours) is disproportionate and unfair to low paid workers. For a worker earning the Living Wage of €11.90 per hour, they could have their income slashed from €297.5 to €178.5. This cut of €119 per week, or a 40% reduction in income, still provides employers with an enormous capacity to ensure workers are compliant and would therefore limit the intentions of this Bill.

Mandate Trade Union has negotiated secure hour contracts with a large number of employers including Tesco Ireland, Penneys, Boots Ireland, Marks & Spencers and Heaton's, among others. The current bands in the legislation are closely aligned with some of those agreements and it is fair to say that they provide the employee and the employer with a level of flexibility and income security that suits both parties.

**Recommendation: Mandate recommends maintaining the existing bands of hours.**

### ***Employment Status***

At the last stage of the debate on the Employment (Miscellaneous Provisions) Bill 2017, an amendment which stated: "It shall be an offence for an employer to incorrectly designate an employee as self-employed" was inserted. While this amendment has merit, the Minister pointed out that the issue has not been fully debated during the consultation process and will therefore delay the implementation of the Bill if the amendment remains. It is worth implementing the merits of this amendment in a stand-alone Bill, but it is unfair on workers on precarious contracts to delay this Bill any further.

**Recommendation: Remove Section 20 of the Bill in its entirety.**

### ***Ability To Seek More Hours***

During the previous two stages of the Bill (Committee and Report Stages), a provision to allow workers to seek more hours at work was debated. It was inserted into the Bill at Committee Stage, but ultimately rejected by 38 votes to 35 at the Report Stage.

It stated: "In the event of hours becoming available an employer shall be required to offer any surplus hours to existing part-time employees first."

This is in line with the EU Part-Time Worker Directive 97 - Annex Clause 5, Section 3:

***"3. As far as possible, employers should give consideration to:***

***(a) requests by workers to transfer from full-time to part-time work that becomes available in the establishment;***

***(b) requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise;***

***(c) the provision of timely information on the availability of part-time and full-time positions in the establishment in order to facilitate transfers from full-time to part-time or vice versa;"***

Unfortunately workers in Ireland, unlike in many other EU countries, have no right to seek more hours at work. The lack of legislation in this regard led to a dramatic increase in underemployment and 'involuntary part-time working' in Ireland between 2008 and 2013 when we had the second highest prevalence of this practice behind Spain, with more than 147,000 workers unable to obtain extra hours. That figure is still quite high with many employers choosing to employ two or three workers on part-time precarious contracts rather than provide a decent full time job for any workers.

In 2015, when lone parents' allowance was cut, the government cited this as an activation measure. The argument was that it would incentivise lone parents to seek more hours at work. Neither lone parents nor any other workers have ever had the legislative capacity to seek more hours at work. If the government is genuine about activation programmes and incentivising lone parents or low hour contract workers to seek more hours, this provision is essential.

**Recommendation: This provision should be supported where possible, in this legislation or elsewhere.**

### ***Conclusion***

During the past decade the Irish workforce has become more and more precarious. The combination of low pay and instability of hours has led to many workers becoming reliant on charities, food banks and on social welfare transfers. Dunnes Stores and Lloyds Pharmacy workers, among others, have highlighted the implications of insufficient legislation. There are now 450,000 workers across the country working on part-time contracts with little or no protections. The implementation of this Bill will not solve all the issues, but it will go some way towards redressing the power that unscrupulous employers have over their workers. It will provide tens of thousands of workers with certainty of hours and therefore certainty of income. And it will ensure that work in Ireland does pay.

Mandate Trade Union urges all members of the Oireachtas to pass the proposed Employment (Miscellaneous Provisions) Bill 2017 as a matter of urgency and to ensure there are no more delays. Our members have waited long enough. Legislate for secure hour contracts now.