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Department for
**Employment
and Learning**
www.delni.gov.uk

Information for: Drivers Working via Employment Agencies and Employment Businesses (October 2008)



INTRODUCTION

This booklet is intended to provide guidance on the legislation specifically relating to drivers recruited by employment agencies/employment businesses in Northern Ireland. This guide should be read in conjunction with the “Detailed Guide” of the legislation governing employment agencies/employment business. This can be accessed on the Department for Employment and Learning website at: www.delni.gov.uk

Although every effort has been made to ensure the information contained in this guide is accurate, it should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the Courts. Readers should be alert to the possibility of developments in case law that may impact on the guidance.

For general advice on employment-related issues, the Labour Relations Agency (LRA) can be contacted by telephoning their Head Office on 028 9032 1442 or their Regional Office on 028 7126 9639. Alternatively, you can visit the Agency’s website at: www.lra.org.uk

Background

The private recruitment sector in Northern Ireland is governed by the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (the 2005 Regulations). The 2005 Regulations set the minimum standards that employment agencies and employment businesses, who operate from premises in Northern Ireland, must meet.

All employment agencies and businesses must comply with the provisions in the legislation. These provisions are designed to protect work-seekers and employers using the services provided by an employment agency or business.

The Department for Employment and Learning (the Department), which is the responsible enforcement authority in respect of the legislation, may prosecute offenders who breach the legislation and in more serious cases, apply to an Industrial Tribunal for an order prohibiting a person from operating as an employment agency or business for up to 10 years.

N. B. Employment agencies/businesses that employ drivers will be in breach of the 2005 Conduct Regulations if they fail to abide by other applicable legislation in NI governing drivers.

INFORMATION FOR DRIVERS WORKING VIA EMPLOYMENT AGENCIES AND/OR EMPLOYMENT BUSINESSES

The Department recognises that there may be abuses of mobile workers by rogue agencies who are not prepared to comply with the legislation and who deliberately fail to provide the correct information on all the hours worked by a driver working for two or more employers via discrete employment agencies or employment businesses. Employers must be able to demonstrate compliance and not simply their intention to comply with the legislation. The vast majority of employment agencies or employment businesses are reputable and generally compliant with the legislation.

The Working Time Regulations (Northern Ireland) 1998 implemented the Working Time Directive in Northern Ireland. Workers performing mobile road transport activities were excluded from specified provisions in the Working Time Regulations but they were afforded similar protection by virtue of sector-specific Regulations, namely the Road Transport (Working Time) Regulations (Northern Ireland) 2005¹ which implemented the provisions of the Council Directive 2002/15/EC which concerns the organisation of the working time of persons performing mobile road transport activities.

These Regulations ensure that workers are protected against adverse effects on their health and safety caused by working excessively long hours or having inadequate rest or disrupted work patterns. Any abuse of these Regulations by rogue employment agencies or employment businesses, or any deliberate collusion to distort the record of the actual hours worked, is illegal and can have an adverse effect on the health and safety of the mobile worker.

The Regulations:

- prescribe the maximum weekly working time and maximum average weekly working time of mobile workers who, in the course of their work, drive² or travel in goods or passenger vehicles which are covered by the Community Drivers' Hours Regulation (Council Regulation (EEC) No. 3820/85) as amended by Council Regulation (EEC) No. 561/2006;
- prescribe the reference periods over which such time is to be calculated;
- regulate periods of availability, breaks, rest periods and night work;
- require employers to keep accurate and complete records of **all** the time worked and to provide copies; and
- make it an offence to fail to comply with their requirements and to provide for enforcement.

Mobile workers who obtain work via employment agencies or employment businesses are subject to terms and conditions under their contract. All

¹ S.R. 2005 No. 241

² A driver is anyone who drives a vehicle or is carried on the vehicle in order to be available for driving.

employment agencies or employment businesses must comply with the provisions in the legislation. These provisions are designed to protect both work-seekers and employers using the services provided by an employment agency or employment business.

Workers are normally paid directly by an employment business as part of their contractual relationship. The employment business is responsible for monitoring their work and keeping appropriate working time records. However, some workers who obtain work via employment agencies or employment businesses on a fixed or short term contract are paid directly by and have a contract with, the hirer. Under those circumstances, the hirer monitors the working time and maintains accurate records. Where no written contract of employment exists, whoever directly pays the worker in respect of work undertaken will be regarded as the employer for the purposes of the Regulations.

Drivers working for two or more employers or another organisation

Some mobile workers register with and work for more than one employment agency or employment business. Whilst this is within the law, if an employee works for two or more employers they must comply with the European drivers' hours rules which state that the calculation of working time must include work performed for all employment agencies or employment businesses for which a mobile worker undertakes road transport activities. Therefore a mobile worker must inform in writing all such employers (or whoever is responsible for keeping his records) of his entire weekly working time which is the combined cumulative total of all the hours worked (excluding breaks, rest and periods of availability) for all employment agencies or employment businesses.

Workers should not do any work which compromises road safety or impairs their own health. Employment agencies and employment businesses are not generally allowed to keep original tachograph charts or electronic data. If tachograph records are used to monitor working time then the employment agency or employment business should copy the chart before returning it to the client, otherwise they will have to ask the client for a copy of the chart or for a summary of the information on the chart. Tachograph records may be sufficient to record the working time of drivers. However, employers will need other records for those employees who do not use a tachograph on one or more days.

Main requirements for employers:

- inform employees of the requirements of The Road Transport (Working Time) Regulations (Northern Ireland) 2005 which regulates the working time of persons performing mobile road transport activities;
- inform employees that they must provide a full written account of the time worked for other employers via employment agencies or employment businesses and keep any records provided;
- employers are responsible for: keeping working time records; making the records available for inspection and informing employees of their

responsibilities. Employees must see details of any relevant agreement in advance;

- employment agencies and employment businesses should keep comprehensive working time records if the mobile worker is paid by or via them;
- keep working time records for 2 years after the end of the period in question;
- owner drivers who do not meet the criteria for a self-employed driver under the Regulations should keep a record of their own working time;
- take all reasonable steps to prevent breaches of the legislation;
- in the event of a dispute, provide documentary evidence for inspectors to enable them to investigate without recourse to a full court hearing; and
- be able to show that they are complying with the Regulations.

Employers **must** ask the mobile worker concerned for a written account of **all** time worked for another employer. The mobile worker **must** declare this information and the employer should retain this information.

N.B. Although most of the requirements for monitoring and keeping records lie with the employer, both the mobile worker and the employer share the responsibility for complying with the Regulations. Both the employer and the mobile worker are potentially liable for prosecution if the rules are systematically broken.

Employers' checklist:

- inform employees of their rights under the Regulations together with details of any relevant agreements;
- notify employees that they must provide a written account of **all** working time they have performed for another employer via employment agencies or employment businesses;
- decide which records/systems you are going to use to record working time;
- if tachograph records are used a separate record of working time will be required if the mobile worker is not travelling that day; and
- check that the employment agency or employment business has had the opportunity to copy the tachograph chart in order that they can keep a record of working time performed by their drivers.

Under the European drivers' hours rules, tachograph records only need to be kept for a year. However, if tachograph charts are being used for the purpose of monitoring working time then they must be retained for two years after the end of the period covered. The employer keeps records of working time and other relevant information such as a copy of any relevant agreement. Where a driver is paid directly by an agency or employment business rather than by one or more employers, the agency or employment business should keep a record of the working time.

What records need to be kept

The Regulations do not specify which records should be kept. However, in addition to the records covered in regulation 29 and associated Schedules (i.e. Schedules 4, 5 and 6) of the 2005 Conduct Regulations, employment agencies / businesses employing drivers must maintain records which show that:

- weekly working time and night work limits are being complied with. It is for the employer to determine what records need to be kept for this purpose.
- There is no requirement that the records kept be used solely for recording working time.
- It may be possible to use existing records maintained for other purposes (such as pay or tachograph sheets) or new arrangements may be needed;
- the employer needs only to make occasional checks of workers who do standard hours and who are unlikely to reach the average 48-hour limit. Workers who work near to the maximum working time limits should be monitored more closely; and
- the employer must keep a record of any relevant agreement with his employees (or group of employees).

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THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

This document is available in other formats upon request.

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