



THE LABOUR COURT

GUIDELINES FOR TRADE UNIONS AND EMPLOYERS

CASES REFERRED UNDER

- **SECTION 32 OF THE INDUSTRIAL RELATIONS ACT, 1946**

OR

- **SECTION 10 OF THE INDUSTRIAL RELATIONS ACT, 1969**

December, 2006

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COMPLAINTS TO THE LABOUR COURT

UNDER SECTION 32 OF THE INDUSTRIAL RELATIONS ACT, 1946

or

UNDER SECTION 10 OF THE INDUSTRIAL RELATIONS ACT, 1969

1. INTRODUCTION

Section 32 of the Industrial Relations Act, 1946 provides for the making by a **trade union representative of workers** to the Labour Court of a complaint that an employer has breached a registered employment agreement which applies to him.

Section 10 of the Industrial Relations Act, 1969 provides for the making by an **employer or a trade union representative of employers** to the Labour Court of a complaint that an employer has breached a registered employment agreement which applies to him.

The Court has recently reviewed its procedures for dealing with such cases in the light of the ongoing high volume of such complaints. The following arrangements will apply for complaints received from 1st December, 2006.

2. MAKING A COMPLAINT

A complaint must be made on the form which is attached to these Guidelines. Copies of the form are available from the Offices of the Court and it is also available in both PDF and Word format on the Court's website (www.labourcourt.ie).

If a complaint is received by the Court other than on this form, the complainant will be asked to complete the form. Also, if a complaint form received has not been fully completed, it will be returned to the complainant for completion.

3. WITHDRAWING A COMPLAINT

It is important that, if a complaint is to be withdrawn at any stage, the Labour Court be informed as soon as possible by means of a written notice to this effect.

4. PROCESSING THE COMPLAINT

4.1 The procedures at paragraph 5 and 7 will apply in respect of complaints relating to the Registered Employment Agreement on Construction Industry Pensions, Assurance and Sick Pay.

4.2 For complaints relating to all other Registered Employment Agreements, the procedures at paragraph 6 and 7 will apply.

5. COMPLAINTS RELATING TO THE REGISTERED EMPLOYMENT AGREEMENT ON CONSTRUCTION INDUSTRY PENSIONS, ASSURANCE AND SICK PAY.

5.1 When the Court's Administration is satisfied that all the required information has been included in the form, and that the required supporting documentation has been attached, a copy of the complete complaint form (and all attachments) will be sent to the named employer by registered post. A covering letter will -

- a) inform the employer of the complaint;
- b) ask the employer to provide evidence that either
 - i. it is an employer to whom the Agreement does not apply, or

- ii. it has implemented the agreement;
- c) inform the employer that he has a right to be heard by the Court as part of its consideration of the complaint,
- d) ask him to indicate if he wishes to be heard, by completing a supplied form to that effect, and
- e) indicate that a failure to reply within 21 days will be taken as confirmation that the employer does not wish to be heard and that the Court will proceed to consider the complaint without a hearing.

5.2 If no response has been received from the employer within the time frame set down in the Court's letter, the complaint will be considered by a Division of the Court. The Division will

- a) consider the written details of the complaint together with any supporting evidence,
- b) decide whether the complaint is well founded, and
- c) if the complaint is considered well-founded, decide the arrears of contribution due - this may involve an inspection of the employer's records.

The employer and the complainant will be informed of the outcome of the Court's consideration of the complaint.

5.3 If the employer has responded to the Court's letter and has indicated that he wishes to be heard, a hearing will be arranged in the normal way.

5.4 If the employer has responded to the Court's letter and has indicated that he wishes to defend the complaint but that he does not wish to be heard, the Court will proceed as at paragraph 5.2, but will also take into account any evidence submitted by the employer.

5.5 Where the complaint has been considered by the Court without a hearing, the following will apply:

- a) if it has decided on the basis of all the evidence before it that the complaint should not proceed any further, this will be conveyed to the parties;
- b) if the Court has decided that the complaint is well founded and the extent of arrears due and owing have been computed (usually following a report by the Labour Inspectorate and the furnishing of calculations by the complainant), a letter will be sent to the employer
 - to ask him to confirm the accuracy of the computations, or to provide evidence to the contrary, and
 - to offer him an opportunity to be heard if the figures are disputed.

5.6 If nothing is heard from the employer within three weeks from the date of the Court's letter, an Order in the amount indicated will be made by the Court.

5.7 If the employer disputes the findings of the inspector or the calculation based on those findings, and wishes to be heard, a hearing will be arranged.

6. COMPLAINTS RELATING TO A REGISTERED EMPLOYMENT AGREEMENT OTHER THAN THE REGISTERED AGREEMENT ON CONSTRUCTION INDUSTRY PENSIONS, ASSURANCE AND SICK PAY

6.1 When the Court's Administration is satisfied that all the required information has been included in the complaint form, a copy will be sent to the named employer, together with relevant background information on the Agreement in question. In addition –

- the employer will be asked whether he intends to contest the complaint,
- he will be informed that, in the absence of an indication that the case will be contested, the Court may decide that the complaint is not being disputed and may proceed accordingly, and
- he will be informed that, in the absence of a reply within 21 days, the complaint will be listed for hearing by the Court.

6.2 If a reply is not received from the employer, and if the complaint has not been withdrawn, it will proceed to a hearing.

6.3 If a reply is received from the employer, the Labour Court will assess the contents of the employer's reply before it is forwarded to the complainant, together with any appropriate comment by the Court. The complainant will be requested to indicate whether, in the light of the employer's response and the Court's comment thereon, he wishes the case to proceed. The employer will be informed of what has been done.

On the basis of the complainant's response, either the case will be withdrawn or it will proceed to a hearing.

6.4 If the complainant indicates that he wishes the case to go ahead, a letter will be issued informing the employer that a copy of his reply has been forwarded to the complainant, that the case is proceeding nonetheless and that he will be notified in due course of the date and time of the Labour Court Hearing.

6.5 If, at any stage, a complainant indicates in writing that he wishes to withdraw a complaint, the employer will be notified in writing accordingly.

7. THE COURT HEARING

7.1 Where a case is to proceed to a hearing, the parties will, in due course, be notified of the Hearing arrangements:

- a letter to the complainant, as well as giving details of the hearing, will also ask that 6 copies of any submission which he proposes to make at the Hearing be lodged at the Court's offices at least 3 working days before the Hearing;
- a summons will issue to the employer and he will also be informed that 6 copies of any submission which he proposes to make at the Hearing must be lodged at the Court's offices at least 3 working days before the Hearing;

7.2 If, in response to the summons, the employer now indicates for the first time an intention to contest the case at the Hearing, he will be informed that

- due to the absence of such indication at an earlier date, the hearing has been arranged on the basis that the case would not be contested,
- he should attend the hearing at the time arranged, but that
- it will be a matter for the Court on the day to decide how to deal with the case.

7.3 Regardless of any lack of advance indication of the employer's intentions with regard to his contesting the case, the complainant should attend the hearing on the basis that it will be contested.

7.4 If there is no indication in advance of the Hearing that the employer intends to contest the complaint but, in the event, presents himself or is represented at the

Hearing, it will be a matter for the Court to decide on the day how to deal with the case.

- 7.5 Where, at the Hearing of a case, the Court at the request of the parties grants an adjournment for any period, the case will be treated as having been withdrawn at the end of that period if the complainant has not returned to the Court in the meantime. In that event, it will be necessary that a new complaint is referred before the Court will take any further action in the matter.



THE LABOUR COURT

Complaint of a Breach of a Registered Employment Agreement

Complaint made under (Please tick as appropriate)

SECTION 32 OF THE INDUSTRIAL RELATIONS ACT, 1946

SECTION 10 OF THE INDUSTRIAL RELATIONS ACT, 1969

Complaint relates to (Please tick as appropriate)

Construction Industry Pensions, Assurance and Sick Pay

Electrical Contracting Industry

Other (Name Registered Employment Agreement)

PLEASE READ ATTACHED NOTES BEFORE COMPLETING THIS FORM

1. COMPLAINANT:

Name and Address of Complainant:

Telephone No.:

Mobile Tel No.:

e-mail address:

2. EMPLOYER:

2.1 Name and Address of Employer

2.2 Please state what evidence you are providing to the Court to verify the name and address of the employer – see Note 1 attached

3. THE COMPLAINT

3.1 Please give a description of the main contracting activity carried out by the employer

3.2 Please relate the activity described to one of the activities referred to in the Agreement - **see Note 2 attached**

3.3 Please indicate the location(s) at which the employer is/was engaged in the construction activity described above. In respect of each such location and activity, please give relevant dates and an indication of the names, RSI Numbers and occupations of employees - **see Note 3 attached**

4. Prior Communication with Employer

Please indicate what steps you have taken to bring the complaint to the attention of the employer - **see Note 4 attached**

Signature:

Position:

Date:

Note: This form should be sent to Registered Agreements Section, The Labour Court, Tom Johnson House, Haddington Road, Dublin 4, Telephone: (01) 6136641, 6136639, 6136638 Lo-Call (if calling from outside (01) area): 1890 220228.

NOTES

1. You are required to provide evidence that the employer is properly named in this complaint form and that the address provided is correct. Where the employer is incorporated as a company, a copy of the CRO registration document should be provided. In other cases, some evidence that the address given is correct should be provided, for example, a letter head, a copy of an entry in the telephone directory, or a receipt for a registered letter.

In the absence of such evidence, the Court will not proceed to consider the complaint.

2. The Registered Employment Agreement in relation to which this complaint is being made describes the activities covered by the Agreement. You are required to indicate, in respect of any activity being complained of, which particular description in the Agreement applies to that activity.
3. The Agreement describes the categories of workers to whom the Agreement applies. You are required to give details of the workers (names, RSI Numbers) in each such category, employed by the employer at any location covered by this complaint, together with relevant dates.
4. It is expected that the Complainant will have written to the employer setting out the complaint before it is presented to the Court. Copies of all correspondence should be provided with this complaint form.
5. The Labour Court should be informed immediately if a complaint is to be withdrawn.



Notification to the Labour Court of intention to Defend a Complaint

- under Section 32 of the Industrial Relations Act 1946
- under Section 10 of the Industrial Relations Act 1969

**Registered Employment Agreement
(Construction Industry Pensions Assurance and Sick Pay)**

Employer details:

Name:
Address:
Contact person:
Phone Number:

Please answer the following Questions:

		YES	NO
1	<i>Is it your intention to defend the complaint against you?</i> <i>If you have answered 'yes', please state the basis for that defence</i>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<i>Do you wish to be heard by the Labour Court in the course of its examination of the complaint?</i>	<input type="checkbox"/>	<input type="checkbox"/>

		YES	NO
3.	<p>Are you an employer to whom the Construction Industry Agreement (Pension Assurance and Sick pay) applies.</p> <p><i>If you have answered 'no', please state the basis for this view</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
4.	<p>If you have answered 'yes' to question 3, have you entered your employees in an approved pension, assurance and sick pay scheme, in accordance with the provisions of the Construction Industry Agreement (Pension Assurance and Sick pay).</p> <p><i>If you have answered 'yes', please indicate the scheme and the employees entered in it.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

Signed: _____

(Please Print Name)

(Position in enterprise)

Date: _____

Note: This form should be completed and returned to Registered Agreements Section, The Labour Court, Tom Johnson House, Haddington Road, Dublin 4, Telephone: (01) 6136641, 6136639, 6136638 Lo-Call (if calling from outside (01) area): 1890 220228 **within 21 days from the date of the Court's letter to you.**