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Recommendation to the Minister for Business, Enterprise and Innovation regarding a request made in accordance with the Industrial Relations (Amendment) Act 2015 at Section 14 for a Sectoral Employment Order for the Construction Sector

This Recommendation is made in accordance with the Industrial Relations (Amendment) Act at Section 16(1).

The Court recommends that the Minister make a Sectoral Employment Order for the Construction Sector as defined in this Recommendation.

The Class, type or group of workers to whom the request is expressed to apply is

Persons employed in the Construction Sector as craft persons, construction operatives and apprentices.

For the purpose of a Sectoral Employment Order a worker to whom such order has application is defined as any person aged 15 years or more who has entered into or works under a contract with an employer, (including through an employment agency within the meaning of the Employment Agency Act, 1971 and / or the Protection of Employees (Temporary Agency Work) Act, 2012), whether the contract be for manual labour or otherwise, whether it be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour. For the purpose of this definition apprentice and apprenticeship has the same meaning as it has in the Industrial Training Act 1967

Definition of the Sector

The sector to which the Order should have application is defined as the sector of the economy comprising the following economic activity:

- The construction, reconstruction, alteration, repair, painting, decorating, fitting of glass in buildings and demolition of buildings;
- The clearing and laying out of sites for buildings, the construction of foundations of such sites, the construction, reconstruction, repair and maintenance within such sites of all sewers, drains and other works for use in connection with sanitation of buildings or the disposal of waste;
- The construction, reconstruction, repair and maintenance on such sites of boundary walls, railings and fences for the use, protection or ornamentation of buildings, the making of roads and paths within the boundaries of such sites;

- The manufacture, alteration, fitting and repair of articles of worked stone (including rough punched granite and stone), granite, marble, slate and plaster;
- The construction, reconstruction, alteration, repair, painting, decoration and demolition of roads, paths, kerbs, bridges, viaducts, aqueducts, harbours, docks, wharves, piers, quays, promenades, landing places, sea defences, airports, canals, waterworks, reservoirs, filter beds, works for the production of gas or electricity, sewerage works, public mains for the supply of water or the disposal of sewerage and all work in connection with buildings and their sites with such mains; rivers works, dams, weirs, embankments, breakwaters, moles, works for the purpose of road drainage or the prevention of coastal erosion, cattle markets, fair grounds, sports grounds, playgrounds, tennis-courts, ball alleys, swimming pools, public baths, bathing places in concrete, stone tarmacadam, asphalt or such like material, any boundary walls, railings, fences and shelters erected thereon;
- The painting or decoration of poles, masts, standard pylons for telephone, telegraph, radio communication and broadcasting;
- Ground levelling, ground formation or drainage in connection with the construction or reconstruction of grass sports grounds, public parks, playing fields, tennis-courts, golf links, playgrounds, racecourses and greyhound racing tracks.

Categories of Worker

In accordance with section 16 (5) (a) of the 2015 Act the Sectoral Employment Order should provide for:

a basic minimum rate of pay to apply to all Skilled General Operatives who have worked in the sector for more than 2 years - (**Category B Worker**)

In accordance with section 16(5) (b) of the Act two higher hourly rates of basic pay as follows:

(1) A higher hourly rate of pay to apply to Scaffolders who hold an Advanced Scaffolding Card and who have four years' experience; Banks operatives, Steel Fixers; Crane Drivers and Heavy Machine Operators (**Category A Worker**)

and

(2) a top hourly rate of pay to apply to Craftspersons in the following trades: Bricklayers/Stone Layers; Carpenters and Joiners; Floor Layers; Glaziers; Painters; Plasterers; Stone Cutters; Wood Machinists; Slaters and Tilers; (**Craftspersons**)

A basic hourly rate of pay to apply in accordance with section 16 (5)(c)(ii) to General Operatives who enter employment for the first time after attaining the age of 18 years and for two years after entering employment in the industry, (**New Entrant Worker**) and in accordance with section 16(5)(d) of the Act a minimum hourly rate of pay to apply to apprentices (**Apprentice**)

Pay Rates

The following basic hourly rates of pay will apply in the sector from 1st October 2019 to 30th September 2020.

Craftsperson €19.44 per hour

Category A Worker €18.86 per hour

Category B Worker €17.50 per hour

Apprentice Year 1 - 33.3% of Craft rate

Year 2 - 50% of Craft Rate

Year 3 - 75% of Craft Rate

Year 4 - 90% of Craft Rate

An hourly rate of pay of €14.14 will apply for two years after entrance to the Sector to all **New Entrant** Operative Workers who are over the age of 18 years and entering the sector for the first time.

The following basic hourly rates of pay will apply in the sector from 1st October 2020.

Craftsperson €19.96 per hour

Category A Worker €19.37 per hour

Category B Worker €17.97 per hour

Apprentice Year 1 - 33.3% of Craft rate

Year 2 - 50% of Craft Rate

Year 3 - 75% of Craft Rate

Year 4 - 90% of Craft Rate

An hourly rate of pay of €14.52 will apply for two years after entrance to the Sector to all **New Entrant** Operative Workers who are over the age of 18 years and entering the sector for the first time.

Normal Working Time

- The normal Working week shall consist of 39 hours worked between Monday and Friday each week;
- Normal daily working hours shall consist of four days of eight consecutive hour's work undertaken between 7 am (normal starting time) and 5 pm (normal finishing time) Monday – Thursday inclusive and one day of seven consecutive hour's work between the 7 am (normal starting time) and 4 pm (normal finishing time) on Friday

Overtime Payments

The following overtime premium rates will apply from 1st October 2019 in respect of overtime working:

<i>Monday to Friday from normal finishing time to midnight</i>	<i>time plus a half.</i>
<i>Monday – Friday from midnight to normal starting time</i>	<i>double time</i>
<i>Saturday (1) First four hours from normal starting time</i>	<i>time plus a half</i>
<i>(2) All subsequent hours till midnight</i>	<i>double time</i>
<i>Sunday - all hours worked</i>	<i>double time.</i>
<i>Public Holiday - all hours worked</i>	<i>double time plus an additional day's leave</i>

Pension Scheme

A pension scheme with no less favourable the terms, including both employer and employee contribution rates, than those set out in the Construction Workers Pension Scheme be in place in the industry. That scheme must provide for entry into the scheme at age 18 and must provide a facility for payment of a daily contribution rate which is a fifth of the weekly rate specified in the scheme.

The contribution rates in the scheme will be as follows with effect from 1st October 2019:

Pension Contribution	Employer €27.35 per week [Daily rate - €5.47]
	Employee €18.24 per week [Daily Rate - €3.65]
	Total Contribution weekly into the scheme per worker - €45.59
	Total Contribution daily into the scheme per worker - €9.12

Death in Service Contribution	Employer €1.14 per week [Daily rate - €.23]
	Employee €1.14 per week [Daily rate - €.23]
	Total death in service weekly contribution - €2.28
	Total death in service daily contribution - €.46

Contribution rates will increase in line with wage inflation in the sector after 1st October 2019.

Terms covering pension benefits

Every employer employing workers to whom this Order applies shall participate in a pension scheme that meets the pension requirements set out hereunder.

Pension Scheme Structure

The pension scheme to which the SEO applies (“SEO pension scheme”) should include the following features and benefits:

1. An SEO pension scheme should be an Occupational Pension Scheme which is registered with and regulated by the Pensions Authority.
2. Recognising the flexible nature of employment across employers within the construction sector and related industries (the Sector), an SEO pension scheme should be established as a multi-employer scheme open to all employers in the Sector.
3. Whilst a member remains employed within the Sector, members should be able to have a single individual pension account within the SEO pension scheme thereby enabling successive employers of the member to contribute to the member’s account provided the employer has joined itself to the SEO pension scheme.
4. Where an employee member leaves service of an employer, the contributions which have been paid by the employee and the employer in respect of the member will be retained in full within the SEO pension scheme in the individual account of that member.
5. The rules of an SEO pension scheme should not permit a member to take a refund of their own contributions prior to reaching retirement age.
6. Bodies that are representative of both employers and unions involved in the Sector must appoint the members of the SEO pension scheme trustee. The constitution of the Trustee Board should also include representatives of both employers and employees in the Sector.
7. In addition to providing pension benefits, an SEO pension scheme must also provide an additional Death in Service benefit with members covered for this benefit upon joining the scheme.
8. An existing pension scheme at the time the SEO comes into force may qualify as an SEO pension scheme provided it complies with the terms of the SEO or is adapted to so comply.

9. An SEO pension scheme must disclose and publicise information about the pension scheme's charges and who bears them. There must be full transparency of charges and this information should be disclosed in the scheme's Trustee Annual Report as well as provided to each member when joining. The total annual charges borne by members should be disclosed and must include all administration costs, Trustee costs, distribution costs, fund management costs, actuarial, accounting, legal and auditing fees and all other charges incurred by the SEO pension scheme.

10. Scheme Design

The terms and conditions applying under an SEO pension scheme and benefits to be provided must be at least as great as that described below.

10.1. Eligibility

An SEO pension scheme must at least provide for an employee of a participating employer in the Sector to be eligible for membership of the scheme provided they have attained age 18 but not yet attained age 65.

10.2. Relevant Pension Contributions

Employers and their employees working in the construction sector and related industries (the Sector) must contribute to an SEO pension scheme.

Contributions should be remitted by employers to an SEO pension scheme in accordance with all relevant pension and other legislative requirements.

10.3. Pension Benefits

a) Members' pension benefits within an SEO pension scheme should be based on the full value of their individual pension funds and there should be no deductions from the contributions paid or when the funds are drawn down.

b) The Trustees of the Scheme will invest each member's pension contributions and these along with the investment returns declared, net of charges, will determine the value of the member's pension fund.

10.4. Retirement

Normal Retirement Age shall be age 65. However, a member may be permitted to retire from age 60 (at the discretion of the scheme trustee). When a member retires, he or she should be able to choose from a range of options based on their entire fund value in line with applicable pension and tax legislation. One of the options which must be available is the provision of a pension for life for the member.

10.5. Death in Service Benefits

a) Every employer to whom the SEO applies must participate in an SEO pension scheme that provides a death in service benefit for the deceased member's dependants. The death in service

benefit should be in addition to the benefits provided for the dependants based on the full value of the member's pension fund.

b) Provided the employee has completed a once-off initial qualifying contribution period, inclusion for death in service benefits shall be automatic on becoming a member of the SEO pension scheme, without medical underwriting or by reference to any previous medical conditions of the member. In the event of the member moving to another participating employer within the Sector, the member should not be required to complete any further qualifying period in order to be covered for death in service benefits.

c) Death in Service Contributions will form part of the overall contribution rate of an SEO pension scheme with a portion payable by both the member and employer in addition to the pension contributions.

d) Contributions should be remitted by employers to an SEO pension scheme in accordance with all relevant pension and other legislative requirements.

e) If a member had met the requirements for the full lump sum death in service benefit, but then leaves service and dies within four weeks of doing so without being re-employed in the Sector, the SEO pension scheme should provide a modified lump sum benefit in addition to the value of their pension account.

f) Death in Service benefits should be payable regardless of cause or timing of death, so long as the member meets the qualification conditions for inclusion for Death in Service benefits as set out above.

Sick Pay

A sick pay scheme in line with the Construction Industry Sick Pay scheme, including no less comparable benefits and contributions by both workers and employers, will be maintained in the sector. Every employer employing workers to whom the Order applies must have in place a provision for Sick Pay benefits for each employee covered in the Order.

The current weekly Sick Pay Contribution in force in the Construction Industry Sick Pay Scheme provided for in the current Order for the sector are as follows

Employer €1.27

Employee €0.63

Total €1.90

These contribution rates should be adjusted in line with wage inflation in the sector from 1st October 2019 onwards.

Terms covering Sick Pay benefits

Scheme Structure

The sick pay scheme to which the Order applies (“SEO Sick Pay Scheme”) should include the following features and benefits.

1. An SEO Sick Pay Scheme should be a funded arrangement with contributions held in Trust and independently administered and managed. An SEO Sick Pay Scheme should facilitate participation by multiple employers to reflect the flexible nature of employment within the Sector.
2. The main purpose of an SEO Sick Pay Scheme is the provision of benefits for every worker for periods of illness or injury while in the employment of employers to whom this SEO applies.
3. The Sick Pay Benefit should be paid to each employee without the need for underwriting or reference to previous medical conditions. Entitlement to Sick Pay Benefits should be unaffected and uninterrupted as employees transfer from one employer to another within the Sector.
4. The Sick Pay Benefits provided by an SEO Sick Pay Scheme should be in addition to any sickness, illness or invalidity benefits payable by the State through the social insurance system.

Scheme Conditions & Benefits

5. Inclusion for Sick Pay Benefits will be automatic on becoming a member of an SEO Sick Pay Scheme. No charges should be incurred by either employers or members for Sick Pay benefit provision, other than the relevant contributions required to provide the benefits.
6. Sick Pay Contributions
 - a) An SEO Sick Pay Scheme should be a contributory sick pay scheme with contributions payable by both employers and employees.
 - b) A member shall not lose accrued Sick Pay Benefit rights or entitlements as a result of changing employment within the Sector as accrued service will transfer to the next employer to whom the SEO applies.
 - c) Employers who fail or neglect to make the authorised deduction shall be liable for the total contribution required to ensure that the worker’s Sick Pay Benefits are maintained in full for the period of service with them.

7. Relevant Benefits

- a) An SEO Sick Pay Scheme shall provide for the payment of a standard Sick Pay Benefit for a specified duration and the benefit and duration should be disclosed to participating employers and members.
- b) An SEO Sick Pay Scheme may include a waiting period during which a member would not be entitled to any benefit from the scheme whilst initially absent due to illness or injury. This waiting period should not exceed the first five working days of disability.
- c) An SEO Sick Pay Scheme should facilitate continuity of Sick Pay Benefit from the Scheme from the first working day of disability where a claimant has returned to work for a period of two working days or less. This is provided that the sick pay entitlement from the scheme has not been exhausted by reference to the duration limitations referenced earlier.
- d) An SEO Sick Pay Scheme should facilitate provision of a Supplementary Sick Pay Benefit if the claimant has no entitlement to Social Welfare benefit due to inadequate number of Social Welfare contributions.
- e) An SEO Sick Pay Scheme may set appropriate limitations on the maximum duration for which a Sick Pay Benefit may be payable. These must be clearly documented and disclosed to participating employers and members. The maximum duration under an SEO Sick Pay Scheme should not be any lower than a period of 10 weeks in any calendar year, whether for a single claim or in aggregate in a scheme year.

Dispute Resolution Procedure

If a dispute occurs between workers to whom the SEO relates and their employers, no strike or lock-out, or other form of industrial action shall take place until the following procedures have been complied with. All sides are obliged to fully comply with the terms of the disputes procedure.

Individual Dispute

- a) The grievance or dispute shall in the first instance be raised with the employer at local level with a requirement to respond within 5 working days. Notice in writing of the dispute shall be given by the individual concerned or his trade union to the relevant organisation representing employers or to the employer directly.
- b) If the dispute is not resolved it shall be referred to the Adjudication Service of the WRC
- c) Either party can appeal the outcome of the Adjudication Hearing to the Labour Court.

Collective Dispute

- a) The grievance or dispute shall be raised in the first instance with the employers with a requirement to respond within 5 working days. Notice in writing of the dispute shall

be given by the workers concerned or their trade union to the relevant organisation representing employers or to the employer directly.

b) If a dispute is not resolved the issue shall be referred to the Conciliation Service of the WRC

c) If the issue remains unresolved, it shall be referred to the Labour Court for investigation and recommendation.

The Court so recommends.

The Labour Court

25th April 2019