



AN ROINN DEPARTMENT OF  
OIDEACHAIS EDUCATION  
AGUS SCILEANNA AND SKILLS

## DTP Practice Note 5

# Pay and Conditions of Employment

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Planning & Building Unit  
Department of  
Education and Skills  
Tullamore, Co. Offaly.

Telephone: (057) 9324300  
Fax: (057) 9351119

Web: <http://www.education.ie>

**PLANNING and BUILDING UNIT**

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## 1. Introduction

### 1.1 Design Team Procedures

- (a) This document should be read in conjunction with the Design Team Procedures [Third Edition, August 2007, revision 1 dated 19th February 2008] and all subsequent amendments and practice notes.
- (b) All Design Team members are required to read Sections [6.2 Employer's Representative](#) and [6.3 Payments](#) of the Design Team Procedures 2007 Design Team Procedures [3<sup>rd</sup> Edition] and to comply with them in full.

## 2. Pay and Conditions of Employment

### 2.1 Public Works Contracts

- (a) In traditional Construction Projects (not D&B) the use of one of the following Public Works Contracts is obligatory
  - (i) PW-CF1 - [Public Works Contract for Building Works designed by the Employer](#)
  - (ii) PW-CF5 - [Contract for Minor Building & Civil Engineering works designed by the Employer](#)
  - (iii) PW-CF6 - [Public Works Short Form of Contract](#)

### 2.2 Pay and Conditions of Employment Clauses

- (a) In PW-CF1 - Public Works Contract for Building Works designed by the Employer, and PW-CF5 - Contract for Minor Building & Civil Engineering works designed by the Employer the applicable clause for Pay and Conditions of Employment is Clause 5.3. (See Appendix 1)
- (b) In PW-CF6 – the [Short Public Works Contract](#) the applicable clause for Pay and Conditions of Employment is [Clause 7.2](#) (See Appendix 2)
- (c) In sub-clause 5.3 (PW-CF1 and PW-CF5) and 7.2 (PW-CF6) a Worker means an individual employed by, or otherwise working for, the Contractor or the Contractor's Personnel on or adjacent to the Site

### 2.3 Duties of Contractor

- (a) The Contractor **must** prominently exhibit copies of the relevant sub-clause (i.e. [5.3](#) or [7.2](#) as appropriate) for the information of persons at the Site
- (b) The Contractor **must** ensure that the rates of pay and the conditions of employment, including pension contributions, comply with all applicable law and that those rates and conditions are at least as favourable as those for the relevant category of worker in any employment agreements registered under the Industrial Relations Acts 1946 to 2004. The above obligations apply regardless of what rates the Contractor has tendered for adjustments to the Contract Sum.
- (c) The Contractor **must** keep proper records [including time sheets, wage books and copies of pay slips] showing the wages and other sums paid to and the time worked by each worker, deductions from each worker's pay and their disposition, and pension and other contributions made in respect of each worker, and produce these records for inspection and copying by any persons authorised by the Employer, whenever required by the Employer.

- (d) Under [Clause 4.2](#), with each [Interim Statement](#), the Contractor **must** give the Employer's Representative a certificate that, for the work to which the interim statement relates, the Contractor **has complied in full with this clause** (i.e. [5.3](#) or [7.2](#) as appropriate).

## 2.4 Duties of Employer's Representative

- (a) Random Checks for Employment Records
- (i) DTP Practice Note 2 Guidance on the Preparation of Tender Documents [Nov 2009] recommends under [Clause 4.3 \(j\)](#) (of that guidance document) that in the schedule PART 1 J - Random Checks for Employment Records the clause should read: "Sub-clause 5.3.3A(2) **shall be** part of the Contract". This confers on the Employer's Representative a contractual right to conduct random checks within the Contract.
  - (ii) It does not oblige the Employer's Representative to carry out such checks unless he/she deems it necessary.
- (b) In all cases the Employer's Representative **must** ensure that:
- (i) The Contractor prominently displays copies of the Pay & Conditions of Employment Clause on the site, and
  - (ii) The Contractor presents with each [Interim Statement](#) under [Clause 4.2](#), a valid certificate stating that, for the work to which the interim statement relates, the Contractor has complied in full with the relevant Pay and Conditions of Employment Clause. The relevant form is MF 1.13 - [Rates of Pay and Conditions of Employment Certificate](#) available at [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie) or [www.education.ie](http://www.education.ie)
- (c) If the Employer's Representative is aware of or becomes aware of substantive evidence of non-compliance with the Pay and Conditions of Employment Clause (including non-payment of pension contributions), under that sub-clause he/she is empowered to:
- (i) Request from the Employer a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers, not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same.
  - (ii) Seek information for the purpose of ensuring the obligations described in the Pay and Conditions of Employment Clause have been properly discharged.
- (d) If upon investigation it is demonstrated to the Employer's Representative satisfaction that the Contractor has not complied with this clause, the Employer's Representative may (without limiting his/her other rights or remedies) estimate the amount that should have been paid to workers and contributions that should have been made on their behalf, and withhold the estimated amount from any payment due to the Contractor, until the required amounts have been paid.
- (e) Substantive evidence includes information provided by the **National Employment Rights Authority (NERA)**. NERA ([www.employmentrights.ie](http://www.employmentrights.ie)) is the statutory body tasked with securing compliance with employment rights legislation and its remit includes both inspection and enforcement (and prosecution) services. Other such evidence would be incontrovertible public knowledge.
- (f) While the Employer's Representative may have the right ([Sub-clause 5.3.3.A\(2\)](#)) to make random checks, this right needs to be tempered by the complexity of such investigations, the nature of the alleged contraventions and the project size. Where such investigation is warranted, expert assistance may be required to ensure that such investigations are effective.
- (g) It is noted that the cost of such investigations is borne by the Employer where there is no substantive non-compliance. Under the Conditions of Engagement, and the Construction Contract, the Employer's Representative's authority to expend monies other than as specified in either contract is limited.

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- (h) Where unsubstantiated allegations are brought to the attention of the Employer's Representative, he/she should first refer the person/organisation making the allegation to the **National Employment Rights Authority (NERA)**.
- (i) Once it has been confirmed that the issue has been referred to NERA and that the allegations are currently under investigation the Employer's Representative (at his/her discretion) may separately wish to make a preliminary assessment of the possibility of an infringement against the Contract Clause.
- (j) Such a preliminary assessment may include a site visit to determine whether copies of the Pay and Conditions of Employment Clause have been prominently exhibited.
- (i) If the Pay and Conditions of Employment Clause has not been exhibited prominently for the information of persons at the Site, the ER should first bring this to the attention of the Contractor (in writing or otherwise recorded, such as at a site meeting).
- (ii) Where a Contractor fails within a reasonable time to remedy the clause contravention, the Employer's Representative may take this as prima facie evidence of a failure to comply with the entire clause and may invoke some or all of the powers of examination and inspection.
- (k) The ER may also take into account the fact that the Contractor has or has not provided (with each interim statement) a valid certificate stating that, for the work to which the interim statement relates, the Contractor has complied in full with the relevant Pay and Conditions of Employment Clause.
- (i) In the case of the [Short Form of Contract](#), if the Contractor fails to present with each [Interim Statement](#) a valid certificate stating that the Contractor has complied in full with the relevant Pay and Conditions of Employment Clause, the Employer's Representative shall not issue a payment certificate for that work until such time as a valid Pay and Conditions of Employment Clause certificate is provided.
- (ii) In the case of the [Public Works Contract for Building Works designed by the Employer](#), and the [Contract for Minor Building & Civil Engineering works designed by the Employer](#) the Employer's Representative is not entitled to withhold payment (as in the Short Form). However the ER is entitled to conduct random checks as above. As with the display of the Pay and Conditions of Employment Clause, failure to comply can be taken as prima facie evidence of a failure to comply with the entire clause.
- (l) The Employer's Representative may also may wish to raise the issue with the Contractor, reminding the Contractor of ER's rights under the Clause to estimate the amount that should have been paid to work persons, and contributions that should have been made on their behalf, and to deduct the estimated amount from any payment due to the Contractor, until the Employer is satisfied that all proper amounts have been paid.
- (m) Finally if the Employer's Representative is of the view that a more detailed investigation is warranted, he/she should first inform the Employer that he/she (the Employer's Representative) intends to invoke the powers under Pay and Conditions of Employment Clause to
- (i) seek (within 5 working days) a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same.
- (ii) proceed with an estimation of the amount that should have been paid to work persons, and contributions that should have been made on their behalf, and to deduct the estimated amount from any payment due to the Contractor.
- (n) In addition to the sanctions under this clause the Employer's Representative should inform the Contractor that any breaches under this Clause will be referred by the ER to the **National Employment Rights Authority (NERA)** for consideration (and prosecution if appropriate).

**PW-CF1 and PW-CF5 Pay and Conditions of Employment Clause 5.3**

- 5.3.1 The Contractor shall prominently exhibit copies of this sub-clause 5.3 for the information of persons at the Site. In this sub-clause 5.3 **Worker** means an individual employed by, or otherwise working for, the Contractor or the Contractor's Personnel on or adjacent to the Site.
- 5.3.2 The Contractor shall ensure that the rates of pay and the conditions of employment, including pension contributions, comply with all applicable law and that those rates and conditions are at least as favourable as those for the relevant category of worker in any employment agreements registered under the Industrial Relations Acts 1946 to 2004. This applies to workers who are posted workers (within the meaning of Directive 96/71/EC of the European Parliament and the Council of the 16 December 1996 concerning the posting of workers in the framework provision of services), except that the Contractor's obligation to make pension contributions under registered employment agreements does not apply to posted workers who already contribute, or whose contributions are paid, to a supplementary pension scheme established in another member state of the European Union. The obligations in this sub-clause 5.3 apply regardless of what rates the Contractor has tendered for adjustments to the Contract Sum.
- 5.3.3 The Contractor shall in respect of
- (i) workers employed by, or otherwise working for, the Contractor and
  - (ii) all other workers, ensure that their employers, or the persons for whom they are working, do all of the following:
    - (1) pay all wages and other money due to each worker
    - (2) ensure that workers' wages are paid in accordance with the Payment of Wages Act 1991 and are never more than 1 month in arrears or unpaid
    - (3) pay all pension contributions and other amounts due to be paid on behalf of each worker
    - (4) make all deductions from payments to workers required by Law, and pay them on as required by Law
    - (5) keep proper records [including time sheets, wage books and copies of pay slips] showing the wages and other sums paid to and the time worked by each worker, deductions from each worker's pay and their disposition, and pension and other contributions made in respect of each worker, and produce these records for inspection and copying by any persons authorised by the Employer, whenever required by the Employer
    - (6) produce any other records relating to the rates of pay, pension and other contributions, deductions from pay and their disposition, conditions of employment of, rest periods, and annual leave for inspection and copying by any persons authorised by the Employer, whenever required by the Employer
    - (7) respect the right under law of workers to be members of trade unions
    - (8) observe, in relation to the employment of workers on the Site, the Safety, Health and Welfare at Work Act, 2005 and all employment law including the Employment Equality Act 1998, the Industrial Relations Acts 1946 to 2004, the National Minimum Wage Act 2000, and regulations, codes of practice, legally binding determinations of the Labour Court and registered employment agreements under those Laws.
- 5.3.3A (1) Sub-clause 5.3.3A(2) shall only be included in the Contract if the Schedule, part 1J says so, and if not, neither sub-clause 5.3.3A(2) nor its omission shall be taken into account.
- (2) The Employer shall be entitled to make random checks requiring production of records under sub-clauses 5.3.3(5) and (6).
- 5.3.4 If the Employer so requests, the Contractor shall, within 5 working days after the receipt of the request, give to the Employer a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same.
- 5.3.5 The Employer may seek information under sub-clause 5.3.3 only for the purpose of ensuring the obligations referred to in this sub-clause 5.3 to work persons have been properly discharged. All documents and records received under sub-clause 5.3.3 shall be returned to the person providing them or destroyed if the Employer is satisfied that the relevant employer has complied with legal obligations to work persons.
- 5.3.6 If the Contractor has not complied with this sub-clause 5.3, the Employer shall [without limiting its other rights or remedies] be entitled to estimate the amount that should have been paid to work persons and contributions that should have been made on their behalf, and the Employer may deduct the estimated amount from any payment due to the Contractor, until the Employer is satisfied that all proper amounts have been paid.
- 5.3.7 The Contractor shall give the Employer's Representative with each interim statement under sub-clause 11.1 a certificate in the form in the Works Requirements, that, in respect of the work to which the interim certificate relates, the Contractor has complied in full with this sub-clause 5.3.

- 5.3.8 If the Contractor does not comply with this sub-clause 5.3, it shall pay to the Employer any costs the Employer incurs in investigating and dealing with the non-compliance.

### **Short Form of Contract Pay and Conditions of Employment Clause**

#### **7 Pay and conditions of employment of work persons**

- 7.1 The Contractor shall prominently exhibit copies of this clause 7 for the information of persons at the Site. In this clause **Worker** means a person employed by, or otherwise working for, the Contractor or the Contractor's Personnel on or adjacent to the Site.
- 7.2 The Contractor shall ensure that the rates of pay and the conditions of employment, including pension contributions, comply with all applicable law and that those rates and conditions are at least as favourable as those for the relevant category of worker in any employment agreements registered under the Industrial Relations Acts 1946 to 2004. This applies to workers who are posted workers (within the meaning of Directive 96/71/EC of the European Parliament and the Council of the 16 December 1996 concerning the posting of workers in the framework provision of services), except that the Contractor's obligation to make pension contributions under registered employment agreements does not apply to posted workers who already contribute, or whose contributions are paid, to a supplementary pension scheme established in another member state of the European Union.
- 7.3 The Contractor must, and must ensure that the employers of all workers, do all of the following:
- pay all wages and other money due to each worker
  - ensure that workers' wages are paid in accordance with the Payment of Wages Act 1991 and are never more than 1 month in arrears or unpaid
  - pay all pension contributions and other amounts due to be paid on behalf of each worker
  - make all deductions from payments to workers required by law, and pay them on as required by law
  - keep proper records (including time sheets, wage books and copies of pay slips) showing the wages and other sums paid to and the time worked by each worker, deductions from each worker's pay and their disposition, and pension and other contributions made in respect of each worker, and produce these records for inspection and copying by persons authorised by the Employer, whenever required by the Employer
  - produce other records relating to the rates of pay, deductions from pay, conditions of employment, rest periods and annual leave of workers for inspection and copying by persons authorised by the Employer, whenever required by the Employer
  - respect the right under law of workers to be members of trade unions
  - observe, in relation to the employment of workers on the Site, the Safety, Health and Welfare at Work Act 2005, and all employment law including the Employment Equality Act 1998, the Industrial Relations Acts 1946 to 2004, the National Minimum Wage Act 2000 and regulations, codes of practice, legally binding determinations of the Labour Court and registered employment agreements under those laws.
- 7.4 If the Employer so requests, the Contractor must, within 5 working days after the request, give to the Employer a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers, not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same.
- 7.5 The Employer may seek information under the above provisions of this clause only for the purpose of ensuring the obligations described in this clause to workers have been properly discharged. All documents and records received under the above provisions of this clause will be returned to the person providing it or destroyed if the Employer is satisfied that the person providing the information has complied with legal obligations to workers.
- 7.6 If the Contractor has not complied with this clause, the Employer may (without limiting its other rights or remedies) estimate the amount that should have been paid to workers and contributions that should have been made on their behalf, and the Employer may withhold the estimated amount from any payment due to the Contractor, until the Employer is satisfied that the required amounts have been paid. If it has still not been paid by the time the Defects Certificate is issued, the estimated amount is deducted from the Price.
- 7.7 The Contractor must give the Employer's Representative with each interim statement under clause 4.2 a certificate that, for the work to which the interim statement relates, the Contractor has complied in full with this clause. If there is a form for the certificate attached to these Conditions, the certificate must be in that form. Payment due for the work covered by the statement will only be due if the certificate is given. If the certificate has still not been given by the time the Defects Certificate is issued, the portion (of the value of work that the Contractor has not given a certificate for) that the Employer determines is the labour portion is deducted from the Price.
- 7.8 If the Contractor does not comply with this clause, it must pay to the Employer any costs the Employer incurs in investigating and dealing with the non-compliance.