

# Ireland Update: Key Considerations for Establishing a Summer Internship Programme

## What You Need to Know

In this update, we will explain the key concepts which employers should be aware of when establishing summer internship programmes.

We will also summarise the obligations which employers should be aware of when hiring interns, as well as the potential penalties for employers where such obligations are breached.

## Key Terms

There is no legal definition of an 'intern' within Irish employment law and depending on the nature of their role, interns will generally fall under the umbrella of 'fixed-term employees' from a legislative perspective.

A fixed term employee is an individual who has entered into a contract of employment where the end of the contract is determined by an objective condition such as arriving at a specific date.

## The Law

The Protection of Employees (Fixed-Term Work) Act 2003 (as amended) (the "2003 Act") provides that a fixed-term employee shall not be treated in a less favourable manner than a comparable permanent employee in respect of their conditions of employment.

'Conditions of employment' includes conditions in respect of remuneration and related matters as well as any pension scheme arrangements.

The definition of remuneration is quite broad and includes all benefits based on an employee's wage or salary.

A comparable permanent employee for the purposes of the 2003 Act is an employee who is a permanent employee and who does the same or similar work as the fixed term employee under similar conditions.

## Objective Grounds for Less Favourable Treatment

Under the 2003 Act, a fixed-term employee may be treated in a less favourable manner if such treatment can be justified on objective grounds. The less favourable treatment must be carried out for the purposes of achieving a legitimate objective of the employer and must be appropriate and necessary.

What constitutes objective justification for less favourable treatment for the purposes of the 2003 Act has been considered by the Irish courts and it is clear that any ground for less favourable treatment cannot be based on the fixed-term status of the employee.

The Irish courts have acknowledged that less favourable treatment may be justified if the terms of the fixed term employee's contract of employment are, when considered, in their totality, at least as favourable as the terms of the comparable permanent employee.

## Key Considerations for Employers When Hiring Interns

Employers should provide interns with a written statement of terms within five days of the commencement of their employment setting out the core terms of their employment.

Employers should also ensure that the employees are paid a salary which meets or exceeds the national minimum wage pursuant to the National Minimum Wage Act 2000 as amended. The current minimum wage is €12.70 per hour. Failure to pay the national minimum wage is a criminal offence, punishable upon summary conviction, by a fine not exceeding €2,500 or imprisonment not exceeding six months or both.

Employers should also consider how benefits are to be extended to interns and where interns cannot be enrolled in the relevant benefit schemes, employers may need to consider alternative options.

While interns will not have the requisite service to take an unfair dismissals claim against an employer under the terms of the Unfair Dismissals Act 1977 – 2015, as amended, an intern, as a fixed term employee, will have an entitlement to the usual suite of employment law rights which are afforded to permanent employees.

It is also important to note that employers have a duty to provide a safe and healthy place of work for interns in accordance with the requirements set out under the Safety, Health and Welfare at Work Act 2005, as amended.

While interns will generally be over the age of 18, it is also important for employers to bear in mind that the Protection of Young Persons (Employment) Act 1996 as amended provides for enhanced obligations in respect of rest breaks and maintenance of working time records in relation to individuals who are under the age of 18 years of age.

## Penalties for Breaches

An employee can take a claim before the Irish Workplace Relations Commission (the "WRC") alleging that they have been subject to less favourable treatment under the 2003 Act.

If successful, the employee may be awarded compensation of up to two years' remuneration.

## Key Takeaway

It is important employers are mindful of interns' status as fixed-term employees. As such, consideration must be given to the legal obligation not to treat such fixed-term employees less favourably, unless any differences can be objectively justified by a reason not related to the employee's fixed-term status.

Before issuing any contracts or discussing terms of employment with interns, we recommend taking advice in order to ensure that proper procedures are being followed.

Please contact your usual Maples Group contact if you require assistance with any Irish employment and immigration matters.

## Dublin

### Karen Killalea

+353 1 619 2037

[karen.killalea@maples.com](mailto:karen.killalea@maples.com)

### Ciara Ni Longaigh

+353 1 619 2740

[ciara.nilongaigh@maples.com](mailto:ciara.nilongaigh@maples.com)

### Christopher Bew

+353 1 619 2114

[christopher.bew@maples.com](mailto:christopher.bew@maples.com)

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