

# An Employer's Guide to NERA Inspections



**NERA**  
National Employment Rights Authority

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## Introduction

NERA seeks to achieve a culture of compliance with employment law, by informing employers and employees of their respective responsibilities and entitlements, and by working in close cooperation with them and their representatives.

Working with individual employers through the NERA inspection process is a key element of checking and ensuring compliance. This Guide is designed to assist an employer to understand the inspection process and prepare for an inspection. A NERA inspection need not be a difficult or onerous event for an employer. Compliant employers, and those willing to become so who cooperate with the inspection process have nothing to fear. Maintaining the correct records and making them available to our Inspector will help us to establish quickly if an employer's workplace is compliant, or to provide an employer with the information necessary to become compliant. Areas of non-compliance identified during the inspection process can usually be resolved satisfactorily by communicating and cooperating with the Inspector.

In addition to compliance checks, NERA provides an information service to employers. For information on any area of employment law, an employer can contact NERA's Information Officers or ask the Inspector. Contact details for NERA are provided on Page 14 of this Guide.

The aim is to make the inspection process as simple as possible for employers and to take up the minimum of an employer's time and resources. An employer can help NERA in achieving this by having his/her employment records available and up to date at the time of the inspection.

NERA Inspectors are trained to carry out their work in a professional, courteous and fair manner and in line with the Code of Practice for NERA Employees<sup>1</sup> and the NERA Inspection Procedures Manual<sup>2</sup>. If, following an inspection, an employer is unhappy about any aspect of how the inspection was conducted, that employer can make a complaint to NERA. The process for making a complaint is set out at Page 11 of this Guide.

1 This Code sets out the general principles that guide and inform the work of NERA personnel and is available at [www.employmentrights.ie](http://www.employmentrights.ie).

2 This Manual sets out the detailed procedures governing operational aspects of NERA inspections and is available at [www.employmentrights.ie](http://www.employmentrights.ie).

## Timing of the Inspection

In general, an employer will get advance notice of an inspection. An appointment letter, giving a proposed date and time for the inspection, will be sent to the employer. If he/she has a valid reason as to why the inspection cannot be carried out at the appointed time, the employer should contact the Inspector as soon as possible to arrange an alternative date and time. In some instances, the Inspector may call unannounced. This would typically arise in relation to visits to verify compliance with the Protection of Young Persons legislation.



## Location of the Inspection

Employers are required by law to keep their employment records at the place of employment. The Inspector will generally assume that this is where the inspection will take place. If an employer wishes to have the inspection carried out elsewhere, he/she should contact the Inspector, who will consider any reasonable requests to carry out the inspection at an alternative location.

### Private Residences

An Inspector will not enter a private residence without the householder's consent. Where the inspection is to take place in a private residence, an employer should alert the Inspector in advance.

## Communication

All correspondence from NERA Inspectors will include the Inspector's contact details (direct dial land-line and e-mail address). If an employer has had an inspection and needs an update on the case, he/she should contact the Inspector directly. If contacting the Inspector by phone, the Inspector needs to be satisfied of an employer's identity before providing information on a case. This is to ensure that employer information is kept confidential. NERA Inspectors are required to provide a quality response to any written correspondence as soon as possible, but not later than ten working days from the date of receipt and to return phone calls within two working days.

If an employer chooses to be represented by a solicitor or accountant, they will get the same information as NERA would provide to an employer. In all other situations where an employer would like us to deal with a representative, the employer will be required to complete a Form of Authority confirming that NERA may disclose relevant information to the third party. The NERA Form of Authority is available from [www.employmentrights.ie](http://www.employmentrights.ie) or from the Inspector.

All employers inspected will be informed, in writing, when the inspection is concluded.

## Preparing for the Inspection

The best way to prepare for an inspection is for the employer to ensure that he/she has the up-to-date employment records required by law available on the day of the inspection. (See the Employer's Checklist in this Guide). An employer is required by employment law to retain records for a period of three years.

A template with a number of questions will accompany the letter notifying an employer of a proposed inspection. It will greatly assist and speed up the inspection process if the employer has this completed when the Inspector arrives or if the information is available in a similar format. If the employer needs further information on the records that should be available, please contact the Inspector in advance, who will be happy to assist.

*Note: It is an employer's responsibility to cooperate with the inspection process and to provide information and records in an appropriate format in order to assist the Inspector in making a determination on compliance.*

## The Inspection

An Inspector is required to determine independently the level of compliance with the relevant employment law. It is therefore essential that all of the records, information and explanations necessary be provided, so that there is sufficient evidence on which to make that determination.

Employers should be aware that, irrespective of the reason for the inspection, or the Inspector carrying it out, the same process and procedure will be applied. These procedures ensure that all inspections are carried out in a professional, consistent and fair manner.

## Reasons for the Inspection

**Inspections can be initiated for a number of reasons, including:**

- ✿ In response to complaints received of alleged non-compliance with relevant employment rights legislation;
- ✿ As part of NERA's compliance campaigns which focus on compliance in a specific sector or a specific piece of legislation, or,
- ✿ Routine inspections.

**In general, NERA does not provide details as to why a particular inspection is taking place for the following reasons:**

- ✿ All inspections are carried out in the same manner irrespective of the reason for the inspection and the employer is presumed to be compliant unless evidence to the contrary is found;
- ✿ Not identifying a complaint/complainant protects them from potential victimisation;
- ✿ Not identifying the reason for the inspection protects the employer from vexatious victimisation accusations.

***In the following specific, limited circumstances, a NERA Inspector will inform an employer that there has been a complaint where:***

- *There is a repeat inspection within six months of the first inspection as a result of a complaint received subsequent to the first inspection*
- *A complainant's name is not on any records*
- *An employee asks an Inspector to do so*
- *An inspection is on foot of a request to enforce the decision or determination of an employment rights body*

## **Inspectors' Powers / Warrant**

Prior to the commencement of an inspection, the Inspector is required to identify themselves and produce their Warrant of Authorisation to the employer or their representative and explain the nature and purpose of the visit/inspection together with the legislative basis upon which they are acting.

*(See Appendix, page 15)*

## **Conducting the Inspection**



At the outset, the Inspector will carry out an initial interview with the employer or his/her representative. The relevant records will then be requested for inspection. Having examined the records and carried out the necessary calculations, the Inspector will then interview a sample of employees. This is usually

followed by a further meeting/interview with the employer or his/her representative to inform them of any preliminary findings.

If it appears from the inspection that an employer is compliant with the relevant employment law, the Inspector will inform the employer or his/her representative that a letter will issue, concluding the inspection.

If potential breaches have been detected during the inspection, the Inspector may need to ask the employer further questions in relation to them. It may also be necessary at this stage (or indeed at an earlier stage, depending on circumstances) to caution the employer, i.e. informing him/her that what they say could be used as evidence. This is done in order to protect an employer's right not to incriminate themselves as a result of anything they might say. The Inspector will use words to the effect that:

*"I must inform you that you are not obliged to say anything unless you wish to do so. However, anything you do say will be taken down and may be given in evidence".*

Whilst being cautioned may give rise to concern for some people, it is important to understand that it is done in order to protect the rights of the person being cautioned.

## Examining the Records

The maintenance of statutory records is a key element of ensuring compliance and is a key focus of our activity. Accurate records can protect employees from being exploited and can also protect employers from false or vexatious allegations. Lack of compliance with statutory record keeping is a very common breach detected by NERA. NERA regularly detects minor, and sometimes inadvertent, infringements by employers in relation to record keeping.

In general, the Inspector starts the inspection by examining a sample of original records over a period of one year prior to the inspection date. It is a matter for the Inspector to determine whether further records should be examined within the previous three years. For details of the records the Inspector will examine,



see the Employer's Checklist in this Guide on Page 13. Where the records do not indicate any breaches of employment law, and this is verified by employee interviews, the Inspector will advise the employer accordingly and the case will be closed.

Records provided should be in an appropriate format and capable of being verified by the Inspector. NERA Inspectors are empowered to take copies of employment records and prior to leaving the premises, the Inspector will take copies of records examined. If an employer does not have the facility for - or does not consent to - having the records copied, the Inspector will request the employer's consent to take the original records away to copy and then return them. In such circumstances, the employer will get a receipt for the records taken and they will be returned either by registered post or in person within 15 working days.



## Interviewing Employees

Interviews are conducted with a sample of employees in order to check the veracity of records and information provided during the inspection. Under employment law, Inspectors are entitled to interview any employee without the permission of their employer. However, as a courtesy and in order to avoid any disruption to an employer's business, NERA Inspectors will seek an employer's consent to interview employees on the premises. If the employer does not want employees interviewed on the premises, or if the Inspector deems

it unsuitable to carry out interviews on the premises, they may be conducted off site and outside of working hours. In some circumstances where it is not possible or appropriate to interview employees, the Inspector may issue employee questionnaires in the post to the selected employees. A sample questionnaire is available on [www.employmentrights.ie](http://www.employmentrights.ie).



## Where Compliance is Evident

Where the necessary records are available and demonstrate compliance with employment law and this is subsequently verified through interviews with employees, the inspection can be carried out efficiently and with the minimum disruption to the employer's business. Following such inspections, the Inspector will issue a letter concluding the inspection.

## Where Minor Non-Compliance is Detected

In some cases, where Inspectors encounter minor or sometimes inadvertent breaches, the Inspector will ask the employer to rectify them. In such cases, where the employer demonstrates to the Inspector's satisfaction that the matter has been rectified, the file is closed.

## Non-Compliance Involving Underpayment of Wages

If there is reason to believe that employees have been paid less than the minimum amount provided for by law, NERA seeks to recover unpaid wages for all employees (both current and former employees) in respect of whom underpayments have been identified.

In all cases, unpaid wages identified will be sought for three years from the date of the inspection.

The employer will be asked to calculate the extent of any unpaid wages due to employees. These calculations will then be checked by the Inspector to ensure the rates of pay are in compliance with the relevant legislation. The Inspector may also check with employees as necessary during this process.



In all cases, NERA seeks to have unpaid wages paid as soon as possible. Neither NERA, nor its Inspectors, has the power or authority to agree a compromise sum in respect of unpaid wages due to employees, or to negotiate away any part of an employee's legal entitlements.

All employers making good the underpayment of statutory minimum wages will be required to complete and submit the standard NERA Unpaid Wages Payment Form together with evidence that the appropriate amount has been paid. The Unpaid Wages Payment Form is also available to download from [www.employmentrights.ie](http://www.employmentrights.ie) or by contacting NERA directly. In the vast majority of cases where all unpaid wages identified are subsequently paid no further action is taken and the case is closed.

## Serious Non-Compliance and / or Non-Cooperation

There are times when it is necessary and appropriate for NERA to invoke legal sanctions against non-compliant employers. Prosecution is an important part of enforcement and is necessary to deal with employers

who refuse to comply with the law, fail to cooperate with the inspection process, and/or who have been found repeatedly in breach of the law.

Decisions about prosecuting an employer for breaching employment law are based on a consistent, proportionate and fair assessment of the seriousness of the alleged breach. Mitigating factors such as the level of cooperation received, the previous history of breaches, whether the employer has rectified the breach/es, whether employees have received redress in the form of unpaid wages or other entitlements, will all be taken into account in arriving at a decision.

## Sharing Information with Other Agencies

NERA has statutory powers to share information with other agencies, in particular with the Office of the Revenue Commissioners and the Department of Social Protection. NERA may also undertake joint inspections with these bodies. Such sharing of information or joint inspection activity is undertaken in a number of circumstances, including in cases where there may be a risk of non-compliance across the three areas. A joint approach may also be taken where an employer refuses to cooperate with, or provide records to, one of the organisations.

## Ensuring Quality Customer Service

NERA is committed to providing a high quality service. A key element of measuring and continuously improving that service is customer feedback, for example in the form of comments and suggestions from people who have used our services or who have had an inspection. To assist this process we carry out regular surveys. After an inspection, an employer may receive a NERA customer survey form. Please take the time to complete the survey, as the feedback is greatly valued. The feedback form is also available to download from [www.employmentrights.ie](http://www.employmentrights.ie) or by contacting NERA directly.

## Making a complaint about NERA

Anyone who is concerned about any aspect of the service received from NERA, or who considers that a member of staff of NERA dealt with them other than in a professional, fair or impartial manner, should advise the person concerned of their dissatisfaction. If the matter remains unresolved, a formal written complaint can be made to the Regional Manager of the complainant's area, outlining the details of the complaint. The complaint will then be examined according to the "Complaints about NERA" process.



1. The Regional Manager will investigate the complaint and provide the complainant with a response/remedy
2. If the complainant is not satisfied with the response or remedy proposed by the Regional Manager, he/she should address the complaint to the Director of NERA, who will have the matter investigated and provide a response/remedy
3. If a complaint relates to staff at or above the level of Regional Manager, it should be addressed directly to the person in the first instance and then to the Director if the matter has not been resolved

If a complainant is not satisfied with the outcome of NERA's investigation of the complaint, he/she may make a complaint to the Ombudsman who may investigate the matter.

Full details on how to make a complaint together with the relevant contact details are available on [www.employmentrights.ie](http://www.employmentrights.ie) or directly from NERA.

## Employer's Checklist

In the vast majority of cases, employers who can answer yes to the questions in the check list below will meet their legal obligations in relation to record keeping, provided the records are maintained and presented for inspection in an appropriate format and are capable of being verified by the Inspector. In some cases, particularly in sectors that are subject to specific sectoral agreements, additional records may be necessary to demonstrate full compliance.

### Employers Checklist

#### Do I have:



My employer's registration number with the Revenue Commissioners



A list of all my employees: including full names, address and PPS numbers



Dates of commencement and if relevant, dates of termination of employments



Written terms of employment for each of my employees



Employees' job classification



A record of annual leave and Public holidays taken by each employee



Hours of work for each employee (including start and finish times)



Payroll details including: gross to net, rate per hour, overtime, deductions, commission, bonuses and service charges etc.



Evidence that I provide employees with payslips



A register of any employees under 18 years of age



Details of any board and lodgings provided



Employment permits or evidence that permit is not required as appropriate for non EEA nationals or Bulgarian or Romanian citizens



The completed template sent with the appointment letter or the same information available in a similar format.



## Further Information

*NERA provides a range of information leaflets and Guides to assist employers and employees in relation to rights and obligations under Irish employment law. A full list of these is available on our website [www.employmentrights.ie](http://www.employmentrights.ie) or from any of our offices.*

## Contact Details

**Employers with questions about a specific inspection should contact the Inspector directly. For other queries or more information on employment legislation, please contact NERA.**

### **National Employment Rights Authority**

O'Brien Road,  
Carlow,  
Ireland.

Telephone: (059) 917 8800

Fax: (059) 917 8912

[www.employmentrights.ie](http://www.employmentrights.ie)

### **NERA Information Service**

Telephone: (059) 917 8990

Lo-Call: 1890 80 80 90

Fax: (059) 917 8909

*Callers should note that the rates charged for the use of 1890 (Lo-Call) numbers may vary among different service providers.*

## Appendix:

The Warrant of Authorisation has the official emblem of the State in the form of a harp, as well as the NERA logo. The information contained in the warrant is reproduced below:

AN ROINN FIONTAR, TRÁDÁLA AGUS NUÁLAÍOCHTA  
DEPARTMENT OF ENTERPRISE, TRADE AND INNOVATION

### WARRANT OF APPOINTMENT

The Minister for Enterprise, Trade and Innovation hereby appoints the undermentioned person to be an Inspector, to exercise all the powers and perform all the duties conferred or imposed on an Inspector under the following Acts:

- Industrial Relations Acts, 1946 to 2004
- Protection of Young Persons (Employment) Act, 1996
- Organisation of Working Time Act, 1997
- Parental Leave Act, 1998
- National Minimum Wage Act, 2000
- Carers Leave Act, 2001
- Employees (Provision of Information & Consultation) Act, 2006

*and* to be an Authorised Officer to perform all the duties conferred or imposed on an Authorised Officer under the following Acts or specified sections thereof:

- Redundancy Payments Act, 1967 to 2003
- Employment Agency Act, 1971
- Protection of Employment Act, 1977
- Protection of Employees (Employers' Insolvency) Acts, 1984 to 1991
- Payment of Wages Act, 1991
- Section 2(1) and 2(2) of the Employment Permits Act 2003
- Sections 18,19,23,24,25,27 of the Employment Permits Act 2006





[www.employmentrights.ie](http://www.employmentrights.ie)



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