

# Unfair Dismissal Award for Employee with Expired Employment Permit

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*In a recent decision, the WRC awarded €25,000 to an employee dismissed while waiting for her employment permit to be renewed. This case illustrates the tensions between the Employment Permits legislation and the protections afforded to employees under the Unfair Dismissals legislation. Our [Employment & Benefits](#) team unpacks the facts of the case, its implications for employers, and the key steps employers should take to ensure compliance with fair procedures.*

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The Workplace Relations Commissions (WRC) recently awarded €25,000 to an employee who was unfairly dismissed while waiting for her employment permit to be renewed. This case illustrates the tensions between the Employment Permits legislation and the protections afforded to employees under the Unfair Dismissals legislation.

We review this decision, its implications for employers and what they should do next.

## What does the law say?

The Employment Permits Act 2024 creates an offence for an employer to employ a foreign national in the State except in instances where the foreign national holds a valid employment permit.

An employer who employs a foreign national without a valid employment permit is guilty of an offence and is liable to:

- Conviction on indictment,
- A maximum fine of €250,000, or
- Imprisonment for a maximum term of 10 years

A [recent WRC case](#) has illustrated the problems that can arise where an employer dismisses prematurely where a work permit has expired, particularly where no process is followed.

## Background

The dismissed employee at the centre of this case was from Brazil and was employed as a fashion-buyer on a fixed term contract which expired at the end of 2023, however, she continued working into January 2024. The complainant applied to renew her visa in November 2023 which was due to expire on 23 January 2024. She was given a meeting to renew her visa which was outside the lifespan of her visa. The complainant explained her situation to her employer's payroll administrator in November, who did not take issue with the impending expiry. The administrator, however, did not pass on any information about the complainant's situation to anyone else in the employer organisation.

The employer then reviewed the complainant's file on the 23 January and realised that the complainant's visa was due to expire on that date. The employer allowed the complainant to continue working on 24 and 25 January while they sought legal advice. The employer stated that the legal advice they were provided with did not inform them of the 8-week grace period allowed for by the Department of Justice at that time.

The employer dismissed the complainant on 25 January 2024 by handing her a letter of dismissal and informing her that she was being let go because her visa had expired. The complainant was not given the opportunity to appeal the decision nor was a conversation had with the complainant at any stage prior to dismissing her and no investigation was carried out. This amounted to a lack of fair process.

The complainant's visa was renewed on 28 January 2024.

## Findings

The WRC was satisfied that the complainant met the criteria set out by the Department of Justice for an 8 week grace period as she had applied to renew her visa well before it expired and had also informed her employer well in advance. The WRC also found that the employee had not been provided with any procedures whatsoever, and the employer had been acting on incorrect information, unaware of the grace period afforded by the Department of Justice.

The adjudication officer was critical of the employer and noted:

*"I am satisfied that the Complainant did meet the criteria set out by the Department of Justice in that she had applied to renew her visa well before it expired, and she informed Ms. Reilly about that on the date of her application. I am also satisfied that the Respondent in the absence of any procedures whatsoever and acting on incorrect information dismissed the Complainant and that that dismissal was unfair. The information in relation to the visa is on the Department website and is readily available to anyone who looks for it. Even that menial task was not carried out by the Respondent prior to terminating the Complainant's employment."*

The employee was found to have been unfairly dismissed and was awarded €25,000.

Employers are advised to carefully consider this decision in particular when dealing with employees who hold work permits. It is clear that there is an obligation on employers to remain up to date on the latest communications and updates from the Department of Justice regarding permits. In any circumstances where dismissal is contemplated, the employer must make sure that they are afforded fair procedures and natural justice.

## Four Top Tips

- Employers should review the Department of Justice website to ascertain whether there are particular delays in processing, and any consequent temporary dispensations for employers relating to pending employment permit applications.
- Employers should ensure that a fair process is followed regarding any decision to dismiss for a work permit issue, and legal advice should be obtained before dismissing.
- Employers should also ensure up to date records are kept regarding all employees' right to work and ensure that no employees are actively working without valid permission.
- A right to work check should be carried out in respect of all new employees.

## People also ask

### What changes does the Employment Permits Act 2024 introduce?

The Employment Permits Act 2024 consolidates and updates employment permits legislation. Changes introduced by the new Act include:

- Enabling an employment permit holder to change employer while remaining on their current permit
- A new seasonal employment permit
- An updated labour markets needs test, and
- A new provision that the foreign national must commence employment within 6 months of the permit being granted.

### Can employers appeal a WRC decision?

In unfair dismissal cases, either or both parties may appeal an Adjudication Officer's decision to the Labour Court within 42 days of the date of the decision. There is a further appeal to the High Court on a point of law only.

### Where can I find the decision?

The decision, *Poliana Fernandes Lima v Elland Distributors Limited Born Clothing (ADJ-00049872)* is available [online](#).

For more information and expert advice, contact a member of our [Employment Law & Benefits](#) team.

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