

Private & Confidential

The Low Pay Commission
Room 207 A
Davitt House
Adelaide Road
Dublin 2
D02TW27

Main Office Tel: 00 353 (1) 6177856
Russian Tel: 00 353 (87)7834724
Fax: 00 353 (1) 6177857
Email: info@grogansolicitors.ie
Website: www.grogansolicitors.ie
VAT No. 3828794K

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Richard Grogan

Re: Board and Lodging Rates

Dear Sirs,

As a Solicitor who acts in Employment Law cases I would like to make a submission in relation to the issue of Board and Lodging.

1. I believe there is a difference which should be made between situations where Board and Lodging is a requirement and where it is offered.

Where an employee is required to live in a particular location then this is a condition specified by the employer and in those circumstances I would contend that the Board and Lodging Rates are reasonable and should not be increased as the employer is effectively directing it is a condition of employment that the employee lives in a particular location. This is often to suit the employer as it will often relate to such issues as childcare etc. It may also arise in situations such as hotels which are located in remote areas and sometimes often in care homes where because of issues relating to employees working late at night and a lack of public transport employers may require the employee to be in situ.

There is an argument where Board and Lodging is offered that the rates might be at a higher rate, where it is not a condition that the employee lives in.

Richard Grogan, BCL, AIT1, TEP, Principal,
Michelle Moran B.A., LL.B. Senior Associate



2. What does Board and Lodging mean?

The issue of Board and Lodging in the legislation is not specifically defined as to what quality would need to be provided. Evaluation of Board and Lodging may well depend on what level of accommodation is provided. Should a person who has to share room pay the same as a person who is provided with a room? What level of comfort needs to be provided? Is it simply a bed for lodging? Is it that they would have access to sitting rooms or somewhere where they can watch television?

In the case of Board there is no definition as to what that means. There is no definition in the legislation as to what level of food or standard of food must be provided or whether they have to cook themselves. Are they sharing a meal with others or are they getting a particular standard of meal?

3. Location

The cost of lodging somewhere like Dublin is going to be significantly higher than in a small rural town. Is there to be across the board figures as there currently is?

4. Avoiding creating bonded labour.

Currently from 1 January an employee on the National Minimum Wage working 40 hours a week will earn a gross €370. If their contract only provides for 20 or 30 hours a week will they still have the same Board and Lodging? What will that leave them with? Will it put the employee in a position that they just will not have any disposable income?

5. Tax treatment

If employees are receiving Board and Lodging then under the Tax Rules they should be taken into account for tax purposes. It is a benefit which should be taxed and subject to USC and employer PRSI and PAYE deductions. I have never seen this happen.

Conclusion

The current levels for allowable deductions for Board and Lodging are arbitrary. However, we are dealing with different categories of worker being those who are offered accommodation and those who are required to live on site. Increasing the deductions for Board and Lodging without setting minimum standards of Board and Lodging would significantly impact on the actual monies workers will actually receive and it is possible that they will get minimal benefits.

The cases of abuse which I came across are generally ones where employees are required to live on site. They are the ones where the employees do not get the appropriate rest and break periods, where employment records are not maintained and where often tax is not paid.

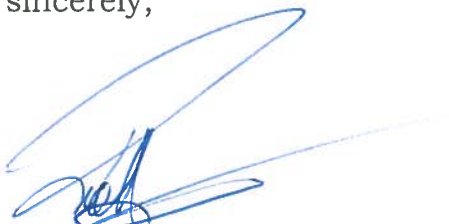
If there is to be a provision for any increases I would contend that it would be a requirement to make any claim for a deduction that the legislation would be amended so that the employer must register with the appropriate tax authorities and equally that they would register with the Workplace Relations Commission where either Board, Lodging or Board and Lodging is being provided. This would mean that there would be some oversight. It would mean that there will be documentation in relation to Tax and Social Welfare and that the WRC would be in a position to do inspections to make sure that appropriate employment records are being maintained.

We still have a situation where there is a significant exploitation of non-Irish Nationals particularly in the area of Au Pairs. There is a considerable resistance to these people being put through the tax system. There is, from the information that is coming to me, little or no compliance with Employment Law as regards people being furnished with Contracts of Employment, working time records being maintained, individuals being paid a premium for Sunday work, getting Public Holidays or additional days' pay if working on a Public Holiday, or getting holidays or Holiday Pay. In addition there is still a underground system operating in Ireland through some very dubious employment agencies, most of which are not registered, who are providing Au Pairs and where the Au Paris have been paid well below the National Minimum Wage.

The issue of Board and Lodging is one which I believe should only be able to be claimed by an employer where they can show that they are paying the National Minimum Wage for all hours worked less Board and Lodging but if they do not do so then in those circumstances they should not be able to claim the allowances. Equally I would believe that there should be a requirement that they are registered for tax as employers with the Revenue and the Department of Social Protection and I would strongly be of the view that there should be a registration system with the WRC, so that appropriate inspections can be identified and there would be some data as to the level of people who have been provided with Board and Lodging. It would mean that there would be information by way of general numbers and counties. I would equally believe that if there is to be any increase in the allowances that there should be a provision as regards what the basic requirements are for Board and Lodging.

I do believe that you do have an extremely difficult job to do in setting the figures but I would be strongly of the view that only compliant employer should be able to claim Board and Lodging as a deduction.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Richard Grogan', written over a horizontal line.

Richard Grogan
Richard Grogan & Associates
Solicitors
16/17 College Green
Dublin 2