



# FAIR EMPLOYMENT MONITORING: Additional Guidance

**FAIR EMPLOYMENT MONITORING RETURN**  
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FAIR EMPLOYMENT AND TREATMENT (NORTHERN IRELAND) ORDER 1998  
FAIR EMPLOYMENT (MONITORING) REGULATIONS  
(NORTHERN IRELAND) 1999  
(AS AMENDED)

The monitoring form is in five parts.

- Parts A, B, and E must be completed by ALL registered employers and Public Authorities.
- Part C to be completed ONLY by registered employers and Public Authorities who have employed apprentices i.e. employees employed under a contract of apprenticeship during the twelve month period ending on the date at A2.
- Part D must be completed ONLY by employers with more than 250 employees and Public Authorities.

Guidance notes to assist you in completing your monitoring return are enclosed with this form.

- PART A

**SEE NEXT PAGE**  
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*Failure to complete and return this monitoring return to the Equality Commission for Northern Ireland by the date at A3 is a criminal offence and carries on conviction a fine of up to £5,000*

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## **Legislative Context**

Under fair employment legislation and associated monitoring regulations, registered employers in Northern Ireland have a legal duty to provide an annual monitoring return to the Equality Commission. The regulations require specified information relating to the community background and sex of employees, applicants, appointees and in some instances promotees and leavers, to be included in the annual monitoring return. These definitions are explained in more detail in the Commission's 'A Step by Step Guide to Monitoring' publication. However, the regulations do **not** distinguish between the various types of contract that an individual may hold, or the various ways in which they may have been recruited.

Given the changing nature of employment patterns and the move to more flexible working arrangements, many employers have contacted the Commission requesting information on how different groups of employees, applicants and appointees should be included in the annual monitoring return form. This guidance leaflet has been produced in response to such requests and to ensure that there is a consistent approach from all employers. This leaflet looks at various types of employees, applicants and appointees, promotees and leavers and provides advice for the fair employment monitoring of each category.

Please note that the terms used to describe categories of employees, or types of recruitment are not legal definitions, rather they are reflective of the types of enquiries that the Commission has received. It is up to employers to check that their own working practices comply with all relevant employment laws and codes of practice.

## **Meaning of employment in Northern Ireland**

The legislation requires employers to monitor those persons who they employ, or those persons who apply for posts, where the employment is “in Northern Ireland”.

Originally, the term “employment in Northern Ireland” applied only to jobs which were performed wholly or mainly in Northern Ireland. However, following a change to the law in 2003, the term was widened so that employers now have to monitor employees and job applicants in respect of jobs which are either-

1. wholly or partly performed in Northern Ireland; or
2. wholly performed outside Northern Ireland, so long as the following 3 conditions are satisfied:
  - (i) the employer has a place of business at an establishment in Northern Ireland; and
  - (ii) the work is for the purposes of the business carried on at that establishment; and
  - (iii) the employee is ordinarily resident in Northern Ireland-
    - (a) at the time he applies for or is offered the job, or
    - (b) at any time during the course of the employment.

As this shows, employers based in Northern Ireland who carry on part of their businesses outside Northern Ireland may, in some circumstances, be required to monitor some employees where the jobs in question are performed wholly outside Northern Ireland.

Please contact the Equality Commission if you require further information regarding this issue.

## Employees

For the purposes of monitoring, the 1998 Order and 1999 Regulations use the word “employee” which means

1. an individual employed under a contract of service or apprenticeship; or
2. an individual employed under a contract personally to execute any work or labour (eg a self-employed person).

Employers may classify their employees in different ways; for example casual, temporary, bank staff etc. For the purposes of fair employment monitoring, ‘employees’ must meet the criteria as set out above, and be employed on the registration date, in order to be included in an annual monitoring return.

*‘Full-time’* is defined as those normally working 16 hours or more a week, and *‘part-time’* as those normally working less than 16 hours a week. When considering whether you have more than 250 employees, include both full and part-time workers.

The tables in the monitoring return form relating to the residuary method of monitoring need only be completed if you, the employer, have had to determine an individual’s community background. The information used for the residuary method must be in writing and supplied by the individual concerned.

The aim is to count and monitor *individuals employed* at the anniversary of registration, not the various ways in which each individual may be classified by the employer according to the nature of the contract or multiple contracts they may hold.

## EXAMPLES

### Temporary Employees

Temporary staff should be monitored as employees if they are in the organisation's employment on the actual date of the anniversary of registration.

Employers should not count as employees, people who have worked on an occasional or temporary basis throughout the year, but whose contracts have ceased at the registration date.

Temporary staff who are placed with an organisation by a recruitment agency, and who remain the actual employees of that agency, do not need to be monitored by the organisation. Instead, they should be monitored by their own employer, i.e. the recruitment agency.

### Multi-Job Employees

Where an individual holds two or more posts with the same employer (examples include a play ground assistant and canteen assistant; or home help and clerical officer) then this individual should be monitored **once** only, even though they hold two contracts for two different posts. The hours worked on each post should be aggregated.

Where the individual normally works more than 16 hours per week they should be monitored as a full time employee. Where the individual works less than 16 hours in total, in 2 or more jobs, then they should be monitored as a part-time employee.

If the SOC codes are different for each of the posts held, then the individual should be monitored in the SOC category where the greatest numbers of hours were worked.

### Multi-Contract Employees

There are circumstances where individual members of staff will be given more than one contract of employment for the delivery of the *exact same* job of work. An example of this in the health sector is where a nurse is given a standard contract of employment and a "bank" or "zero hours" contract. In this contract the nurse may work additional hours over the standard contract, subject to the Working Time Regulations (NI) 1998. Such an individual is counted **once** only for the monitoring purposes.

Where the total hours worked is under 16 hours then the person is monitored as part-time. Should the person resign one or other contract, but remain employed, they should continue to be monitored as an employee. If the hours worked changes as a result, employers should check whether the individual should be monitored as full-time or part-time. If an existing employee is given an additional bank contract in the circumstances described, then there is no requirement to monitor that person as a new appointee in that year.

## **Applicants**

Applicants who apply for more than one vacancy during the monitoring period (ie the 12 month period which runs between the anniversary dates of your registration) should be included only once, on the basis of the first vacancy they applied for.

Applicant and appointee tables should be completed even if there has been no recruitment – please insert nil in ‘total’ boxes.

The aim in monitoring applicants is to record the pool of individuals applying to the organisation in that period. In monitoring applicants, the employer should count and monitor *individual applicants*, regardless of the various ways in which they may have been sought for recruitment, or the nature of the contract on offer.

Applicants for **any** vacancies during the monitoring year, regardless of how or where the vacancy is advertised or whether the post is permanent, or a fixed term contract, or of a short term temporary duration, must be monitored as applicants.

If the recruitment exercise straddles the monitoring date, then those applicants whose application forms have been received up to and including the anniversary of registration are included in that years monitoring return form. Applicants whose application forms are received after the monitoring date for the purposes of monitoring are recorded as applicants in the next monitoring year.

## EXAMPLES

### Applicants to a 'Maintained List' or 'Bank List'

Where organisations employ staff from a maintained list or a list of bank staff, then those employees are recorded as applicants only **once** and that is in the monitoring year in which they applied to the list. If a list is closed and then renewed every year requiring staff to reapply, then they should be counted as applicants once each year. If the list is renewed more often than annually, applicants should be counted once only within any monitoring period. Bank or temporary staff who are employees of an agency are monitored, as applicants, by that agency.

### Emergency Recruitment

It is acknowledged that occasions may arise when an employer must provide emergency staffing cover. Should this occur during the monitoring year, then staff who have been recruited to provide emergency cover should be monitored as applicants in exactly the same way that all other applicants are monitored. In addition to the monitoring requirements, it is important that organisations follow the recommendations of the Fair Employment *Code of Practice with respect to **recruitment and selection*** (Section 5.3).

To ensure equality of opportunity, organisations should have systematic and objective recruitment procedures which ensure that all members of all communities are aware and encouraged to apply for job opportunities. While employers often cannot anticipate *when* the need for emergency staffing cover may arise, it should never-the-less be possible to plan how to deal with the situation in a way that is compatible with the recommendations of the Code of Practice.

For the purposes of recruitment, temporary posts should not per se, be regarded as emergency recruitment. Organisations that deviate from systematic recruitment methods are vulnerable to a finding of discrimination against them if a complaint is made, regarding the filling of a post.

## **Appointees**

Appointees are the people appointed to a vacancy during the monitoring year and who are still employed on your date of registration. An individual who becomes an employee but leaves before the end of the monitoring year would not therefore be counted as an employee or appointee. They would however be recorded as a leaver.

Employees are included in the monitoring form as *both* employees and appointees, if they have been appointed during that monitoring year and are still in post at the monitoring date. Temporary appointees are only included in the appointee and employee tables if they are in post on the monitoring date. Organisations should **not** include temporary employees who may have worked for the organisation, both before and after the monitoring date, but who are not actually under contract on the anniversary of the registration.

## **Apprentices**

*Apprentices must be recorded separately as apprentices and also included as employees.*

## Promotees

ONLY public authorities and employers of more than 250 employees are required to complete information on promotees at Part D of the monitoring form<sup>1</sup>. In order for an employee to be considered a promotee 4 conditions need to be met.

1. the employee has moved from one job to another within the organisation, and
2. in doing so they fill a job which was restricted to those already employed by the organisation, and
3. they remained in the new job for at least six months during the monitoring period, or have been notified in writing during that period that they will continue to be in that job, for not less than six months
4. as a direct result of the move they receive an increase in pay (excluding expenses).

Condition 2 means that posts for which an internal employee successfully competed against external competition would not therefore be defined as a promotion. These are set out clearly on the monitoring return form and the *Step by Step Guide to Monitoring*.

The aim is to monitor *individuals promoted* and so if an individual has been promoted more than once during the monitoring year, only the *first* promotion should be included in the monitoring return.

As with other category of employees, only promotees who are still in employment at the anniversary of registration should be included. The information should be included even if the person is no longer in the promoted post.

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<sup>1</sup> Information on promotees will be required for your triennial review under Article 55 FETO; organisations should be collecting this information in preparation for the triennial review of workforce trends.

## Leavers

ONLY public authorities and employers of more than 250 employees are required to complete information on leavers at Part D of the monitoring form<sup>2</sup>.

A leaver is a former employee who has ceased to be employed in the organisation during the monitoring year. Employees who are absent but who remain under contract of employment e.g. those on career break, sickness absence, maternity/parental leave, or other special leave are **not** regarded as leavers.

The aim is to monitor *individual leavers* and so where a former employee has left more than once during the monitoring year only the first occasion should be recorded in the monitoring return. This is also the case where an individual is employed from a bank or maintained list and is employed and leaves on several occasions through out the monitoring year. Such an employee is monitored as a leaver only when they withdraw from the list or the list is closed.

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<sup>2</sup> Information on leavers will be required for your triennial review under Article 55 FETO; organisations should be collecting this information in preparation for the triennial review of workforce trends.

## Further Information

Further information regarding fair employment monitoring can be obtained from the following Equality Commission publications, which are available both as hard copy publications and as downloads from the Commission website

- *Fair Employment in NI : A Code of Practice*

[www.equalityni.org/archive/pdf/FECofFINALwebversion@09.07.pdf](http://www.equalityni.org/archive/pdf/FECofFINALwebversion@09.07.pdf)

- *A Step by Step Guide to Monitoring*

[www.equalityni.org/archive/pdf/StepbyStep2004.pdf](http://www.equalityni.org/archive/pdf/StepbyStep2004.pdf)

Further advice and assistance on fair employment monitoring can be obtained from:

Employment Development Division  
Equality Commission for Northern Ireland  
Equality House  
7 – 9 Shaftesbury Square  
BELFAST  
BT2 7DP

Tel No: 028 90 890890  
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