

# Q & A

## Bulletin Board

With INMO director of industrial relations Phil Ní Sheaghda



### Query from member

Can an employer search the private bag of an employee when leaving duty and if the employee objects and refuses, what rights do they have?

### Reply

*This question is not straight forward in the context of the workplace as it depends on the type of contract that is signed and whether or not there is an express term within the contract that gives an employer permission to conduct searches of personal belongings such as handbags, briefcases etc.*

*If the contract is silent in respect of this issue, an employee could justifiably say that this is their private personal property and that they are entitled to maintain their privacy.*

*What would then be examined is the balance between the individual's expectation to a certain degree of privacy and the other legitimate rights and interests of the employer, most particularly the employer's right to run their business efficiently and protect him/her from the liability or harm.*

*An employee who does not have such a clause in their contract of employment that would allow such searches, could claim breach of contract if an unlawful search was conducted, civil infringement in the area of trespass to the person or civil assault, or indeed sexual harassment in the event that a physical search was conducted. These claims would have to be made and argued and obviously an employer would have the right to make counter arguments in the area of grounds for suspicion etc.*

*Suffice to say, that unless the employee has been made aware that an employer reserves the right to search, property or person, an argument can be made. An employer can notify of this intention/right by including it as a contractual clause by placing a clear notice in the workplace or by agreeing a policy and procedure in the employee handbook. In other words, it should come as no surprise to an employee if they are requested to submit to a search.*

*An employer with or without a term in a contract should, as a matter of best practice, seek consent, prior to conducting any search and an employee can then decide whether this is an infringement or whether it is a matter which they are obliged to concede to as a term of their contract.*

*There has been examination of an issue by the Employment Appeals Tribunal in Donoghue versus Professional Contract Services Limited, 1997, where the employment appeals tribunal was satisfied, having examined the evidence, that it was unreasonable for a contract cleaner in a hospital to refuse to submit to a search of her handbag and the dismissal that followed was consequently held to be a fair dismissal. Although she did not recall doing so, the claimant in question had signed a contract which expressly permitted searches. A security guard, asked the claimant, if he could search her handbag when she was leaving the hospital. There was no evidence given of any particular suspicion or basis for this search.*

*The whole area of physical contact would have to be the subject of the consent of the employee and a good employer and a sensible employer would seek the consent of the employee by putting a term on the contract of employment.*

This is not a formal opinion, but is informed by the lecture notes provided by Cathal McGreal, BL – errors and omissions accepted

### Query from member

I would like to be of assistance to my colleagues in industrial relations and rights and entitlements matters and would be interested in becoming an INMO rep. Do you run INMO rep training courses?

### Reply

*Yes, on an annual basis we endeavour to regularly run INMO rep training courses, covering both basic rep training and advanced rep training. At the moment we have just confirmed two different, two-day basic rep training course dates, which will take place in April 2013. These are as follows:*

*April 15 & 16 – INMO HQ, Dublin and April 22 & 23 – INMO Offices, Cork.*

*Application forms may be obtained from my colleague, Mary Cradden at Tel: 01-6640603 or email: marycr@inmo.ie. INMO rep training courses are free of charge.*