



GUIDE TO EMPLOYMENT LEGISLATION

This booklet has been prepared by the Employment and Equality Law Committee as a general reference guide for practitioners. It is a summary of relevant legislative provisions and practitioners should ensure that they are familiar with changes to legislation. Employment and Equality Law is the subject of frequent change, whether by legislation (domestic and European), or as a result of caselaw. Useful websites for updates include:

Department of Jobs, Enterprise and Innovation <http://www.enterprise.gov.ie/en/>

Equality Tribunal
http://www.labourcourt.ie/en/Workplace_Relations_Bodies/Equality_Tribunal/

Equality Authority <http://www.equality.ie/en/>

Workplace Relations <http://www.labourcourt.ie/en/>

Health and Safety Authority <http://www.hsa.ie/eng/>

While every care has been taken in its preparation, no responsibility is accepted by the Committee or the Law Society for any error or omission. Practitioners are advised to consult the legislation in all cases. Particular attention is drawn to time limits. (See Law Directory 2014 – Periods of Limitation Employment 1017 - 1020). Practitioners are also advised to take special care in advising employer and employee clients as to the tax treatment of any sums being paid either as a result of an award from a court or tribunal or as a result of a negotiated settlement. Section 7 of the Finance Act 2004 provides for an exemption from Income Tax for compensation to an employee or former employee in very limited circumstances and great care should be taken in giving specific tax advice to clients on the tax treatment of any sums awarded or agreed to be paid.

This information is correct as at 1 July 2014. Practitioners should note the Workplace Relations Bill is currently going through the Dail. Once this is published the Guide will need to be updated, and further updates will be made in due course.

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TERMS OF EMPLOYMENT

Terms of Employment (Information) Acts, 1994 - 2012

This legislation requires employers to provide a written statement to employees setting out certain basic terms of employment.

The Act applies to any person working under a contract of employment or apprenticeship or employed through an employment agency or in the service of the State.

The statement detailing the required terms and conditions of employment must be given to a new employee within two months of commencing employment.

Information to be included in the statement by virtue of the Act:

- Full name of the employer and the employee
- The address of the employer in the state
- The place of work or a statement indicating that the employee will be required to work at various places
- Job title and/or nature of the work
- Date of commencement of employment
- If the contract is temporary the expected duration
- If the contract is fixed term the date on which the contract expires
- The rate of remuneration or method of calculating remuneration
- Details of how remuneration is paid i.e. weekly, monthly etc., together with confirmation that an employee may request written details of his/her hourly rate of pay.
- Terms and conditions relating to hours of work (including overtime)
- Terms and conditions relating to paid leave
- Terms and conditions relating to incapacity
- Terms and conditions relating to pensions and pension schemes if applicable
- Period of notice which the employee is entitled to receive and required to be given on termination
- A reference to any collective agreement which affects the terms of employment
- Details of rest periods and breaks
- References to any Registered Employment Agreements or Employment Regulation Orders which apply to the employee, together with confirmation of where these can be obtained.

The statement must be signed and dated by the employee or on his behalf.

The employer is obliged to keep this statement for a period of one year after the termination of the employment. Changes to any terms and conditions required by the Act must be notified to the employee within one month of taking effect.

The employer may include additional terms and conditions at its discretion, and depending on the seniority of the employee, for example:

- requirements regarding shift work
- grievance procedure
- disciplinary procedure including company rules and regulations
- deductions from pay
- provision for lay off/short time

- additional benefits
- post-termination restrictive covenants

In addition, employers must, within 28 days of the commencement of the employment, give new staff a written summary of the procedures that would be used should it become necessary to dismiss them, pursuant to the Unfair Dismissals Acts 1977-2007.

Referral of Complaints

An employee may present a complaint to a Rights Commissioner if it appears that his employer has failed to provide a full and accurate written statement of the particulars of the terms of employment or has failed to notify the employee of any changes to the particulars in the statement. A recommendation of a Rights Commissioner can do one of the following:

- Declare that the complaint was or was not well founded and confirm any of the particulars contained in a statement of employment or alter the terms of same to correct inaccuracies or omissions;
- Require the employer to give or cause to be given to the employee concerned a written statement containing such particulars as may be specified by the Rights Commissioner;
- Order the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances but, in any event, not exceeding 4 weeks remuneration.

A complaint will be statute-barred if made more than 6 months after termination of employment. A party concerned may appeal to the Employment Appeals Tribunal from a recommendation of a Rights Commissioner, and a further appeal lies to the High Court, but on a point of law only. Inspectors appointed by the Minister for Jobs, Enterprise and Innovation are empowered to give employers directions in relation to compliance with the Act.

2. MINIMUM NOTICE

Minimum Notice and Terms of Employment Acts 1973 to 2005

Employees are entitled to statutory minimum notice or pay in lieu except where they have been working for an employee for less than 13 weeks or are dismissed for gross misconduct. The statutory entitlements to minimum notice are based on periods of continuous service and are as follows:

Service	Notice
13 weeks - 2 years	1 week
2 - 5 years	2 weeks
5 - 10 years	4 weeks
10 -15 years	6 weeks
Over 15 years	8 weeks.

An employee must give an employer at least one week's notice unless the employment contract specifies to the contrary.

The above notice provisions do not apply, however, where the employer is entitled to terminate the employment contract summarily; that is, immediately without notice, on account of the employee's gross misconduct.

Employers and employees may agree longer periods of notice.

Procedures and Enforcement

Redress for breach of the Minimum Notice and Terms of Employment Acts 1973 to 2005 is obtained by application to the Employment Appeals Tribunal. The Tribunal may award compensation to an employee whose employer has not given the employee proper notice or who has not paid the employee properly during his/her period of notice. In assessing loss with regard to notice, the Tribunal will take into account not only salary/wages but also all other remuneration, such as, commission and overtime. However, if the employee was sick during the notice period or was on strike, no compensation is payable.

The decision of the Employment Appeals Tribunal shall be final and conclusive save that any person dissatisfied with the determination of the Tribunal may appeal to the High Court on a point of law. In addition, the Minister for Jobs, Enterprise and Innovation may, at the request of the Tribunal, refer a question of law arising in proceedings before it to the High Court for determination by it and the determination of the High Court shall be final and conclusive.

3. WORKING TIME

Organisation of Working Time Act 1997 ("the OWTA")

The OWTA regulates working hours for employees (with limited exceptions) as follows:

Weekly rest entitlements:

- An employee shall not work more than a maximum average of 48 working hours in each period of seven days. This average is calculated over a reference period of four months, which may be increased to a period of six months in certain situations. There are also some exceptions to this, the most important of which relates to those employees who are in a position to decide their own working hours.
- The weekly rest period must include a Sunday unless otherwise stated in the contract of employment. An employee who is required to work Sundays must be compensated with a reasonable allowance or increase in pay or time off or a combination of these.

Daily rest entitlements:

- Minimum 15 minute break every 4.5 hours or 30 minutes every 6 hours
- At least 11 consecutive hours rest in 24 hours.

Night Workers:

- An employee who works at least 3 hours between 12 midnight and 7 am at least 50% of the year is a Night Worker. A Night Worker must not work in excess of an average of eight hours in a 24-hour period calculated over a maximum reference period of two months.

- In addition, an employee who is a special category Night Worker is not permitted to work more than eight hours in any period of 24 hours. A special category Night Worker is someone whose work has been assessed as involving a special hazard or a heavy physical or mental strain.

Exemptions

Certain sectors of activity are exempted from the rest provisions of the OWTA. Where there are specific exemptions in the OWTA, in almost all cases an equivalent compensatory rest period must be given. It is important to verify if a particular activity is subject to a specific regulation made under the OWTA.

There are exemptions from the daily and weekly rest provisions for split-shift workers and from other provisions for workers where there may be exceptional or unforeseen circumstances or emergencies.

Practitioners need to have regard to a number of relevant regulations made under the OWTA which may affect clients in certain sectors.

Relevant Statutory Instruments:

- (1) Organisation of Working Time Act, 1997 (Commencement) Order, 1997 SI No 392 of 1997
- (2) Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997 SI No 475 of 1997
- (3) Organisation of Working Time (General Exemptions) Regulations, 1998 SI No 21 of 1998
- (4) Organisation of Working Time (Code of Practice on Compensatory Rest and Related Matters) (Declaration) Order, 1998 SI No 44 of 1998
- (5) Organisation of Working Time (Exemption of Civil Protection Services) Regulations, 1998 SI No 52 of 1998
- (6) Organisation of Working Time (Breaks at Work for Shop Employees) Regulations 1998 SI No 57 of 1998
- (7) Organisation of Working Time (Code of Practice on Sunday Working in the Retail Trade and Related Matters) (Declaration) Order, 1998 SI No 444 of 1998
- (8) Organisation of Working Time (Public Holiday) Regulations, 1999 SI No 10 of 1999
- (9) Protection of Young Persons (Employment) Act 1996 (Employment in Licensed Premises) Regulations 2001 S.I. 350 of 2001
- (10) Organisation of Working Time (National Day of Mourning) Regulations 2001 S.I. 419 of 2001
- (11) Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations, 2001 S.I. 473 of 2001
- (12) European Communities (Workers on Board Sea-Going Fishing Vessels) (Organisation of Working Time) Regulations 2003 S.I. 709 of 2003

- (13) European Communities (Merchant Shipping) (Organisation of Working Time) Regulations 2003 SI No 532 of 2003
- (14) The European Communities (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004 SI No 494 of 2004
- (15) Organisation of Working Time (Inclusion of Offshore Workers) Regulations 2004 SI No 819 of 2004
- (16) Organisation of Working Time (Inclusion of Transport Activities) Regulations 2004 SI No 817 of 2004
- (17) European Communities (Organisation of Working Time) (Mobile staff in civil aviation) Regulations 2006 SI No 507 of 2006
- (18) Organisation of Working Time (Exemption of Civil Protection Services) Amendment Regulations 2009 SI no 478 of 2009
- (19) European Communities (Organisation of Working Time) (Activities of Doctors in Training) Amendment Regulations 2010 SI No 553 of 2010
- (20) European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2010 SI No 36 of 2012

Procedures and Enforcement

A claim may be brought in writing using a Workplace Relations Claim form (found at www.workplacerelements.ie) to a Rights Commissioner within 6 months of the date of any contravention (twelve months where “reasonable cause” is shown for the failure to bring a claim within 6 months). A decision of a Rights Commissioner shall do one or more of the following:-

- Declare that the complaint was or, as the case may be, was not well founded;
- Require the employer to comply with the relevant provision;
- Require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 2 years remuneration in respect of the employee's employment.

Either party concerned may appeal to the Labour Court from a decision of a Rights Commissioner by giving notice to the Labour Court within 6 weeks of the date on which the decision was communicated to the party.

There is a further appeal from the Labour Court to the High Court on a point of law.

4. WAGES – MINIMUM AND PAYMENT REQUIREMENTS

National Minimum Wage Act 2000

This Act modifies all existing contracts of employment, collective agreements or legislative provisions insofar as they provide for less favourable remuneration than is provided for by the Act. This Act enables the Minister for Jobs, Enterprise and Innovation to prescribe a

national minimum hourly rate of pay by Statutory Order. Ministerial orders are issued providing for a National Minimum Wage per hour and the current minimum rate for an experienced adult worker is €8.65.

Employers can pay sub-minimum rates of pay to certain categories of employees in accordance with the following:-

- those under 18 years are entitled to 70% of the wage (i.e. €6.06 per hour);
- those who either enter employment for the first time or continue in their employment after reaching 18 years of age are entitled to 80% (i.e. €6.92 per hour) of the hourly wage in year 1 and 90% in year 2 (i.e. €7.79 per hour);
- trainees undergoing certified study or training are entitled to 75% of the wage for the first one-third of the training/study period, 80% for the second one-third period and 90% for the final one-third period (note: each one third must be at least one month and no more than one year).

Procedures and Enforcement

Disputes will be referable by an employee to a Rights Commissioner. Before an employee refers a dispute for hearing, he must first seek from his employer a written statement of pay and this must be provided within four weeks of the request.

The Rights Commissioner, on hearing a dispute, will make a decision. The decision may include an award of arrears (being the difference between any amount paid or allowed by the employer to the employee for pay and the minimum amount the employee was entitled to be paid or allowed in respect of the period to which the dispute relates and any reasonable expenses of the employee in connection with the dispute) or the Rights Commissioner may require an employer to remedy, within a specified time (not being later than 6 weeks after the date the decision was communicated to the employer) or in a specific manner, any matter, including the payment of any amount, in respect of which the employer is in breach of this Act.

An appeal against a Rights Commissioner's decision may be made to the Labour Court within six weeks. If an employer fails to comply with a decision by the Rights Commissioner, the employee may refer the matter to the Labour Court. A failure to follow a determination by the Labour Court may be referred to the Circuit Court.

Payment of Wages Act 1991

This Act establishes a range of rights for all employees relating to the payment of wages. The main rights established are a right to a readily negotiable mode of wage payment, a right to a written statement of wages and deductions and protection against unlawful deductions from wages.

The Act provides a right of complaint to a Rights Commissioner for any employee who has had an unlawful deduction from wages. The following payments are regarded as wages:-

- normal basic pay as well as any overtime;
- shift allowances or other similar payments;
- any fee, bonus or commission;

- any holidays, sick or maternity pay; and
- any other return or payment for work (whether made under contract of employment or otherwise and any sum payable to an employee in lieu of notice of termination of employment).

The Act specifically excludes the following from forming part of an employee's wages for the purposes of this Act:-

- any payment in respect of expenses incurred by the employee in carrying out his employment;
- any payment by way of a pension, allowance or gratuity in connection with the death, or the retirement or resignation from his employment, of the employee or as compensation for loss of office;
- any payment referable to the employee's redundancy;
- any payment to the employee otherwise than in his capacity as an employee; and
- any payment in kind or benefit in kind.

The Act specifies a range of legally acceptable modes of wage payment.

Employers must arrange that a written statement of wages be given to every employee with every payment of wages. If wages are paid by credit transfer, the statement of wages should be given to the employee as soon as possible after the credit transfer has taken place. In every other case, the statement of wages must accompany the wages.

Each statement of wages must show the gross amount of wages payable to the employee and itemise the nature and amount of each deduction.

The Act allows an employer to make the following deductions from the wages of an employee:-

- any deduction required or authorised by law e.g. PAYE, USC, PRSI;
- any deduction or payment required or authorised by a term of the employee's contract; and
- any deduction agreed to in writing in advance by the employee such as trade union subscriptions or VHI premia.

Any deduction arising from any act or omission of an employee must satisfy certain conditions:-

- the deduction (or payment to the employer) must be provided for in the contract of employment in a term whether express or implied and, if express, whether oral or in writing;
- the amount of the deduction (or payment to the employer) from wages must be fair and reasonable having regard to all the circumstances including the amount of the wages of the employee;

- the employee must be given at some time prior to the act or omission or the provision of the goods or services, written details of the terms in the contract of employment governing the deduction (or payment to the employer) from wages. When a written contract exists, a copy of the term of the contract which provides for the deduction (or payment) must be given to the employee. In any other case, the employee must be given written notice of the existence and effect of the term;
- the employee must be given particulars in writing of the act or omission or the goods or services and the amount of deduction or payment at least one week before the deduction is made; and
- the deduction must be made no later than six months after the act or omission or the goods or services became known to the employer.

Procedures and Enforcement

An employee may complain to a Rights Commissioner where it appears that the employer has made an unlawful deduction, or required an unlawful payment, from wages. Such complaints must be made within six months of the date of the deduction or unlawful payment giving rise to the complaint. This may be extended by a further six months where the Rights Commissioner is of the view that there are exceptional circumstances.

Where the Rights Commissioner decides that the complaint is well-founded, he can order the employer to pay to the employee compensation of such amount (if any) as he thinks reasonable in the circumstances but, in any event, an amount not exceeding the net amount of the wages (after the making of any lawful deduction therefrom) that:

- a. in case the complaint related to a deduction, would have been paid to the employee in respect of the week immediately preceding the date of the deduction if the deduction had not been made, or
- b. in case the complaint related to a payment, were paid to the employee in respect of the week immediately preceding the date of payment.

Either party can appeal against a Rights Commissioner's decision to the Employment Appeals Tribunal within six weeks. A party to proceedings before the Tribunal may appeal to the High Court from a determination of the Tribunal on a point of law and the determination of the High Court shall be final and conclusive. An employee may appeal to the Circuit Court seeking the enforcement of a Rights Commissioner decision or Employment Appeals Tribunal determination, if the employer fails to carry it out within six weeks. The Circuit Court may issue an Order compelling the employer to comply.

5. STATUTORY MINIMUM WAGES OTHER THAN THE NATIONAL MINIMUM WAGE

The *Industrial Relations Acts 1946 to 2012* contained two parallel mechanisms whereby rates of pay for certain categories of workers could be prescribed by secondary legislation. Once so prescribed, these rates of pay superseded any contractual provisions which previously applied to affected workers. Statutory minimum rates of pay which are greater than the national minimum wage could be specified under these provisions. At the time of writing, these statutory mechanisms are in a state of flux because of a series of decisions of the superior courts.

Registered employment agreements, REAs

The *Industrial Relations Act 1946* specified a mechanism whereby trade unions and employers could conclude “employment agreements” which specified rates of pay for affected workers. Such agreements could apply to single enterprises or to entire sectors of the economy, such as the construction industry and the electrical contracting industry. Once concluded, such agreements could be registered by the Labour Court, thereby becoming registered employment agreements, “REAs”.

The REA system was significantly amended in the *Industrial Relations (Amendment) Act 2012*. In 2013, the system was struck down as unconstitutional by the Supreme Court. The Government has announced that it will publish legislation which will replace the former REA system.

Joint labour committees, JLCs

The *Industrial Relations Act 1946* also established a system whereby joint labour committees (“JLCs”) were established to regulate the rates of pay for workers in certain sectors of the economy. These committees contained representatives of employers and trade unions and were independently chaired. JLCs proposed draft orders specifying rates of pay. If accepted by the Labour Court, these draft orders became employment regulation orders, “EROs”.

The JLC system was struck down by the High Court as unconstitutional in 2011. A reformed version of the system was enacted in the *Industrial Relations (Amendment) Act 2012*. Existing JLCs were then reviewed by the Labour Court, and some have been abolished. JLCs now exist in sectors such as retail grocery; hotels (outside the cities of Dublin and Cork); catering; contract cleaning and the security industry. These JLCs may soon begin the statutory process which may lead to new EROs setting statutory minimum rates of pay in the affected sectors.

Possible continuing effect of REAs and EROs which were struck down

At date of writing, no valid ERO or REA exists; they were rendered void by the litigation described above. Nevertheless, affected workers may retain contractual rights to benefit from the rates of pay which they had received pursuant to the EROs and REAs in question.

6. HOLIDAYS

Organisation of Working Time Act 1997

Part III of the Organisation of Working Time Act 1997 (“OWTA”) deals with annual leave and public holidays. All employees, including those engaged through an employment agency, are entitled to paid annual leave as follows:

- 4 working weeks where at least 1365 hours have been worked in the leave year (unless the employee changes their job) **or**
- one third of a working week where the employee works at least 117 hours in a calendar month **or**
- 8% of the hours worked in a leave year (subject to a maximum of four working weeks).

There is no provision within the OWTA to limit leave to this amount and employees may negotiate additional annual leave in excess of the above. Agency workers may also be

entitled to additional leave if an employee (otherwise a “direct recruit”) qualifies for additional leave.

Holiday pay must be paid in advance. If the pay is static it is the normal rate for the working hours in the week immediately preceding the holiday. If it varies it is the average of the working hours in the 13 weeks before the holiday.

The employer can determine the time of annual leave but must give one month’s notice and have regard for the employee’s family circumstances and the opportunities for rest and recreation available to the employee. Annual leave must be taken within the leave year or by agreement within six months in the following year. Pay cannot be given in lieu unless an employee is leaving his job. If an employee falls ill on annual leave and provides a medical certificate for the period of illness, it shall not be counted as annual leave. The employee is not entitled to pay for being ill while on annual leave if the employer does not pay sick leave.

Public Holidays

All employees are entitled to public holidays but may at the option of the employer be given either a paid day off on the day, a paid day off within a month, an extra day’s annual leave or an additional day’s pay.

The employer can be requested not more than 21 days before the public holiday to nominate the option he proposes to take.

Current public holidays are:-

- (a) 1 January (New Year’s Day);
- (b) St Patrick’s Day;
- (c) Easter Monday;
- (d) the first Monday in May;
- (e) the first Monday in June;
- (f) the first Monday in August;
- (g) the last Monday in October;
- (h) Christmas Day; and
- (i) St Stephen’s Day

Absence

There is no entitlement to public holidays where employees are absent from work for 52 weeks due to an occupational illness; 26 weeks in the case of other illness or injury; or 13 weeks for authorised absence. There is no entitlement to public holidays during a strike.

Public Holiday Work

An employee who normally works on a public holiday is entitled to an additional day’s pay. Otherwise (for example, a part-time employee), an employee is entitled to 1/5 of a week’s pay. Part-time employees only qualify for this benefit if they have worked for at least 40 hours during the 5 weeks preceding the public holiday.

The calculation of pay for a public holiday is the same as that for annual leave and is set out under the Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997 (S.I. No.475 of 1997).

Where an employee leaves employment on the week ending on the day before a public holiday then they will be entitled to pay for that holiday, provided they have worked for the employer during the preceding four weeks.

Procedures and Enforcement

A claim may be brought in writing using a Workplace Relations Claim form (found at www.workplacerelations.ie), to a Rights Commissioner within 6 months of the date of any contravention. This may be extended to twelve months where "reasonable cause" is shown for the failure to bring a claim within 6 months.

A decision of a Rights Commissioner shall do one or more of the following:-

- Declare that the complaint was or, as the case may be, was not well founded;
- Require the employer to comply with the relevant provision; or
- Require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 2 years remuneration in respect of the employee's employment.

A party concerned may appeal to the Labour Court from a decision of a Rights Commissioner by giving notice to the Labour Court within 6 weeks of the date on which the decision was communicated to the party.

7. MATERNITY LEAVE

Maternity Protection Acts 1994 and 2004

The Safety, Health & Welfare at Work (General Application) Regulations 2007 S.I. 299 of 2007

Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006 S.I. 51/2006

The Maternity Protection Acts 1994 and 2004 apply to all pregnant employees, all employees who have given birth in the previous 14 weeks, and all employees who are breastfeeding up to 26 weeks after the birth, provided they have notified their employer of their condition. No minimum length of service is required. In the absence of any contractual obligation, employers are not obliged to pay women on maternity leave. Women may be entitled to Maternity Benefit, administered by the Department of Social Protection.

Qualifying employees are entitled to:-

- 26 consecutive weeks maternity leave for women who commenced maternity leave on or after 1 March 2007, to include at least 2 weeks before the expected date of birth and at least 4 weeks after the birth;
- 16 weeks additional maternity leave to be taken immediately following the 26 week period (optional); and
- Social welfare payment, if applicable, during the initial 26 week maternity leave period only.

Employees must give employers at least 4 weeks written notice before:-

- Taking maternity leave;
- Taking additional maternity leave; and

- Returning to work.

The Maternity Protection (Amendment) Act 2004 introduced a number of significant changes to the Maternity Protection Act 1994 with the result of improving maternity protection for employees. The legislation implemented the recommendations made by the Working Group on the Review and Improvement of the Maternity Protection Legislation. Further additional maternity benefits were given effect by the Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006.

The main provisions of the Maternity Protection Acts 1994 and 2004, as amended by the 2006 Order, are as follows:-

- Provision, subject to the employer's agreement, for the termination of (unpaid) additional maternity leave in the event of sickness, at which point sickness leave will commence;
- Provision, subject to the employer's agreement, for the postponement of maternity leave/additional maternity leave in the event of the hospitalisation of the child;
- Provision for expectant mothers to attend one set of ante-natal classes without loss of pay;
- Provision of a once-off right to fathers to paid time off to attend the last 2 ante-natal classes;
- Provision for breastfeeding mothers who have given birth within the previous 26 weeks to an entitlement, without loss of pay, to either breastfeeding breaks, where breastfeeding facilities are provided by the employer, or a reduction of working hours; and
- Provision that the period of an employee's absence from work on additional maternity leave will count for all employment rights associated with the employment (except remuneration and superannuation benefits), such as seniority and annual leave.

Natal Care Leave

Employees are entitled to paid time off to receive antenatal or post-natal care.

2 weeks' notice of appointments should be given to the employer where possible.

Father's Leave

If a mother dies during maternity or additional maternity leave, the father may avail of the outstanding balance of the leave.

Stillbirths and miscarriages

If an employee has a stillbirth or a miscarriage any time after the 24th week of pregnancy, she is entitled to full maternity leave, as detailed above.

Health and Safety Leave

Under the Safety, Health and Welfare At Work (General Application) Regulations 2007 (S.I. No. 299/2007), employers are required to carry out separate risk assessments to identify any risk to which employees covered by the Maternity Protection Acts might be exposed. If a risk is established, the employer should remove it or transfer the employee to suitable alternative work. If no such work is available, the woman must be granted health and safety leave.

Employers are obliged to pay employees for the first 3 weeks of health and safety leave, after which social welfare benefits may apply. Health and Safety provisions may also apply to employees who normally work at night (subject to medical certification). All employment rights other than the right to remuneration are either preserved or suspended during protective leave.

Employment Equality Acts 1998 – 2011

Specific protection against direct or indirect discrimination is provided for pregnant employees and in relation to maternity leave under the Employment Equality Acts 1998 - 2011. Any complaints must be brought within 6 months of the last act of alleged discrimination. The legislation extends to advertising, equal pay, access to employment, vocational training and work experience, terms and conditions of employment, promotion or re-grading, classification of posts, dismissal and collective agreements.

Returning to work

Section 18 of the Maternity Protection (Amendment) Act 2004 S.I. 28/2004 provides that an employee is entitled to return from maternity leave to the same job and to the same terms and conditions. Section 27 provides that if a return to the exact job is not reasonably practicable, the employer is under an obligation to provide suitable alternative work. The terms and conditions of any new role must not be substantially less favourable than the employee's terms and conditions prior to maternity leave, and the employer is obliged to incorporate any improvements to terms and conditions that the employee would have been entitled to had she not been absent. Employees must give employers at least 4 weeks written notice before returning to work.

Procedures and Enforcement

Disputes arising under the Act, with the exception of claims for unfair dismissal, may be referred to a Rights Commissioner. Such dispute must be referred within 6 months of the alleged breach, with an extension of 12 months allowed only in "exceptional circumstances". An appeal to the Employment Appeals Tribunal must be made within 4 weeks of the decision of the Rights Commissioner. There is an appeal to the High Court from a determination of the Employment Appeals Tribunal on a point of law only.

A claim relating to dismissal can be brought under the Unfair Dismissal Acts 1977-2007. It is important to note that the one year continuous service requirement under the Unfair Dismissals Acts 1977-2007 does not apply where the employee is dismissed as a result of pregnancy, giving birth or breastfeeding, or any matters connected therewith.

8. ADOPTIVE LEAVE

Adoptive Leave Acts 1995 and 2005

Adoptive Leave Act, 1995 (Extension of Periods of Leave) Order, 2006

An employed adopting mother or sole male adopter who commences adoptive leave after 1 March 2007 is entitled to 24 consecutive weeks of unpaid adoptive leave and a further 16 weeks additional unpaid adoptive leave.

In general, the leave commences on the day of placement, but, in the case of a foreign adoption, some or all of the leave may be taken immediately before the day of placement.

An employed adopting father is also entitled to certain leave in circumstances where the adopting mother has died before or during the period of adoptive leave.

Employees must give at least 4 weeks written notice of his/her intention

- To take adoptive leave
- To take additional leave
- To return to work

An employer is also entitled to be notified of the date of placement and given a certificate of placement. The Certificate must be provided as soon as reasonably practicable but no later than 4 weeks after the day of placement.

Employers are not obliged to pay employees on adoptive leave. However, social welfare benefit, if applicable, is available during the initial 24 week period of adoptive leave.

The employee has a right to return to the same job or suitable alternative, subject to providing the requisite notice requirements to his/her employer

An employee absent from work on adoptive leave (including additional adoptive leave) will accrue all entitlements associated with the employment (except remuneration) such as annual leave and public holidays. Annual leave shall be granted by the employer in accordance with Section 20 of the Organisation of Working Time Act 1997.

The Adoptive Leave Act 2005 introduced a number of changes and new rights for adoptive parents. The Act provides parents with limited time off, without loss of pay, to attend pre-adoption classes and meetings. The Act also allows for the termination of additional adoptive leave in the event of the illness of the adopting parent, subject to the agreement of the employer. It provides for the postponement of adoptive leave in the event of the hospitalisation of the child, with the employer's consent.

Procedures and Enforcement

Any dispute (within 6 months from the day of placement or within 6 months of first notification to intention to take leave or 12 months in "exceptional circumstances") under the Act (other than a dismissal arising from the employer's failure to allow the employee to return to work – claim under Unfair Dismissals Acts) can be brought by either the adopting parent or relevant employer to a Rights Commissioner. The Rights Commissioner may award compensation in favour of the adopting parent to be paid by the employer. The amount of compensation shall be of such amount as the Rights Commissioner deems just and equitable having regard to all the circumstances of the case but shall not exceed 20 weeks remuneration.

9. PARENTAL LEAVE / FORCE MAJEURE LEAVE

Parental Leave Acts 1998 and 2006 & European Union (Parental Leave) Regulations 2013

Under the provisions of the 1998 and 2006 Acts, parents are entitled to unpaid leave for each child born or adopted. On 8 March 2013, the European Union (Parental Leave) Regulations 2013 increased the amount of parental leave available to each parent per child from 14 weeks to 18 weeks and extended the time limit for a child with a long term illness to 16 years.

- Generally, employees must have 12 months continuous service to avail of the full 18 weeks' parental leave. However, if the child is very near the age threshold and the parent has been working for his/her employer for more than three months but less than one year then they will be entitled to parental leave on a pro-rata basis.
- The leave must be taken before the child reaches the age of 8 (16 years in the case of children with disabilities or in the case of an adopted child under eight, within two years of the Adoption Order).
- The leave may not be transferred between the parents unless both parents are employed by the same employer, and the employer has agreed to the transfer. In this case a maximum of 14 weeks of parental leave may be transferred from one parent to the other.
- The leave may be taken as one block or, in separate blocks of a minimum of 6 continuous weeks, or more favourable terms with the agreement of the employer. There must be a gap of at least 10 weeks between the two periods of parental leave.
- The leave extends to persons acting in *loco parentis* in respect of an eligible child.
- An employee who falls ill while on parental leave and as a result is unable to care for the child may suspend the parental leave for the duration of the illness following which period the parental leave recommences. During the illness the parent is treated as an employee who is sick
- The leave must be used to take care of the child.

Notification (6 weeks in advance) and confirmation must be given to the employer in writing. This notice should state the starting date and how long the leave will last.

An employer may postpone the leave for up to 6 months on certain stated business grounds. After that the leave cannot be postponed without further written agreement. Grounds for such a postponement include lack of cover or the fact that other employees are already on parental leave. Normally, only one postponement is allowed, but it may be postponed twice if the reason is seasonal variations in the volume of work.

If an employee changes job and has used part only of his/her parental leave allowance then the remainder may be used after one year's employment with the new employer provided the child is still under qualifying age.

Employment Rights

All employment rights other than remuneration and superannuation benefits are protected during parental leave. Employees are also entitled to return to the same job or suitable alternative employment when the leave ends.

Since 8th March 2013, when an employee returns to work after taking parental leave, he/she is entitled to request a change in their work pattern or working hours for a set period. An employer must consider the request but is not obliged to grant it.

Force Majeure Leave

This is paid leave that arises when injury or illness of a close relative (as specified in the 1998 and 2006 Acts) makes the immediate presence of the employee indispensable.

The force majeure provisions now extend to persons in a relationship of domestic dependency, including same-sex partners.

Maximum allowance is 3 days in 1 year or 5 days over 3 consecutive years. Part of a day is counted as a full day.

All employment rights are protected during force majeure leave and the employee has a right to return to the same job or suitable alternative.

Procedures and Enforcement

Any dispute (within 6 months from the occurrence of the dispute) under the 1998 and 2006 Acts (other than a dismissal – claim under Unfair Dismissals Acts 1977-2007) can be brought to a Rights Commissioner who can award up to 20 weeks remuneration or may give “such directions” as the Rights Commissioner “considers necessary or expedient for the resolution of the dispute”.

10. CARER’S LEAVE

Carer’s Leave Act 2001

The 2001 Act allows employees with 12 months continuous service or more to leave their employment temporarily to provide full-time care and attention for persons requiring such for a period of between 13 and 104 weeks unpaid (employees may be entitled to Carer’s Benefit from the Department of Social, Community and Family Affairs).

In addition, the Social Welfare (Consolidated Payments Provisions) (Amendment) (No 8) (Carers and Homemakers) Regulations 2006 provides that employees on carer’s leave may work outside the home in employment or self-employment for an aggregated maximum of 15 hours per week while on carer’s leave.

Carers will have their jobs kept open for them for the duration of the leave. Carer’s Leave does not affect employment rights other than the right to receive pay, holiday and pension benefit. In order for employees to be entitled to take this leave the following will be required:

- A medical assessment that the care recipient (i.e. the person for whose care the leave is taken), is in need of full-time care and attention.
- If an employee does not live with the care recipient, a direct system of communication must exist between the employee’s residence and that of the care recipient: - An employee who wishes to apply for the Carer’s Leave does not need to be related to the care recipient.
- At any one time, not more than one employee may take Carer’s Leave in respect of the same care recipient. There is however, one exception to this provision whereby the two care recipients reside together.
- An employee may not be dismissed because he/she exercises the right to avail of Carer’s Leave.
- Carer’s Leave may be taken in a block of up to 104 weeks, or in a series of lesser periods not exceeding an aggregate of 104 weeks.

Procedures and Enforcement

Disputes about Carer's Leave entitlement will be referable (by an employee or employer) to a Rights Commissioner. Disputes in relation to medical assessments will be referable to Deciding Officers and/or Appeal Officers of the Department of Social, Community and Family Affairs.

The Rights Commissioner may order such redress for the party concerned as the Rights Commissioner considers appropriate including a grant of carer's leave of such length to be taken at such time or times and in such manner as may be so specified, or an award of compensation in favour of the employee concerned to be paid by the employer concerned which is not to exceed 26 weeks remuneration or both.

11. PART-TIME EMPLOYEES

Protection of Employees (Part-Time Work) Act 2001

This Act has three main purposes as follows:

- To prohibit discrimination against part-time workers;
- To improve the quality of part-time work;
- To facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time.

The Act applies to part-time employees irrespective of their length of service or the number of hours they work. The previous threshold which required that a part-time worker should be in the continuous service of the employer for not less than 13 weeks and should be normally expected to work not less than 8 hours for that employer no longer applies. The Act, however, provides for a distinction for casual workers. A casual worker is a part-time worker who works on a casual basis. Casual part-time workers are those with fewer than 13 continuous weeks' service who are not in regular or seasonal employment, or are casual, based on a collective agreement to that effect. A ground which may not be considered as an objective ground in relation to less favourable treatment of a part-time employee may be considered objective grounds in relation to a casual part-time employee – see section 11 of the Act.

An employee's service in an employment is continuous unless that service is terminated by the employee's dismissal or the employee's voluntary departure from his or her employment. The calculation of continuous service for the purposes of entitlement under, for example, the Unfair Dismissals and Redundancy Payments legislation, however, still applies.

Part-time employee means an employee whose normal hours of work are less than the normal hours of work of a comparable employee in relation to him/her.

The Act provides that a part-time employee shall not be treated in a less favourable manner in respect of his/her conditions of employment than a full time employee. However, the Act provides that a part-time employee may be treated in a less favourable manner than a comparable full time employee where such treatment can be justified on objective grounds. A ground would be considered as an objective ground for treatment in a less favourable manner, if it is based on considerations other than the status of the employee as a part-time worker, the less favourable treatment is for the purpose of achieving a legitimate objective of the employer and such treatment is necessary for that purpose. The entitlement of the part-time employee is in proportion to the entitlement of the full-time employee and, therefore, the terms and conditions of employment of a part-time employee shall be on a pro-rata basis.

There is an exception to the general prohibition on discrimination set out in Section 9(1) of the Act insofar as it relates to any pension scheme or arrangement. Section 9(4) provides that, “*Subsection (1) shall, in so far, but only in so far, as it relates to any pension scheme or arrangement, not apply to a part-time employee whose normal hours of work constitute less than 20 per cent of the normal hours of work of a comparable full-time employee*”. Therefore, a part-time employee may be treated in a less favourable manner in relation to a pension scheme arrangement if the employee’s normal hours of work are less than 20% of the normal hours of work of a comparable full-time employee

A comparable full-time employee usually has to be employed by the same employer as the part-term employee or an associated employer. Where there is no full-time employee employed by the same employer or an associated employer then the comparator can be an employee employed in the same industry or sector of employment as the part-term employee. In some cases, the comparator can be set out in a collective agreement. In addition, one of the following three conditions must be met:

- Both employees perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work.
- Both employees perform the same or similar work and any differences are of small importance or occur with such irregularity as not to be significant.
- The work performed by the relevant part-term employee is equal or greater in value to the work performed by the other employee concerned.

(See section 7(2) and (3) of the Act for definition of comparable full-time employee).

The Act provides that a provision in any agreement shall be void insofar as it attempts to exclude or limit the application of any provision of the Act or is inconsistent with any provision of the Act (see section 14 of the Act).

Referral of Complaint

An employee may present a complaint to the Rights Commissioner if it appears that the employer has failed to provide an entitlement to which the employee is due under the Act. Written notice of the complaint must be presented within six (6) months of the date of the alleged contravention. The time limit for submitting a complaint for redress may be extended by a further twelve (12) months if the Right Commissioner is satisfied that the failure to present the complaint under the normal six (6) month period was due to a reasonable cause.

The Rights Commissioner may make a decision to do one or more of the following:

- declare that the complaint was or, as the case may be, was not well founded;
- require the employer to comply with the relevant provision;
- require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 2 years remuneration in respect of the employee's employment.

The employer or employee may appeal the Rights Commissioner’s decision to the Labour Court within six (6) weeks from the date it was communicated to the parties.

The Code of Practice on Access to Part Time Work (S.I. No.8 of 2006) further seeks to:

- Encourage best practice and conformity with the provisions of the Employment Equality Acts 1998–2007 and the Protection of Employees (Part-Time Work) Act 2001;
- Promote the development of policies and procedures to assist employers, employees and their representatives, as appropriate, to improve access to part-time work for those employees who wish to work on a part-time basis;
- Promote discussion and encourage employers, employees and their representatives, as appropriate, to consider part-time work and to address any barriers that may exist;
- Stimulate employers – where consistent with business requirements – to provide wider access to part-time work options ;
- Provide a framework and practical guidance on procedures for accessing part-time work;
- Inform those who are interested in part-time work.

It is important to note that while there is no statutory obligation on an employer in Ireland to accede to a request for part time work, the LRC Code of Practice recommends that employers should give consideration to such requests and to be seen to be fair and reasonable in this regard. Application of the Code can be taken into consideration by a relevant authority in circumstances of a claim under the Act. There is a possibility that a ban on flexible part-time working arrangements could be seen as indirectly discrimination on grounds of gender/ family status contrary to the Employment Equality Acts. This is on the basis that, statistically and traditionally, females mostly usually seek part-time work. Each application for part-time work should be considered on a case by case basis on its merits and a clear rationale outlining reasons for refusal to allow flexible arrangements should be provided.

12. AGENCY WORKERS

The Protection of Employees (Temporary Agency Work) Act, 2012 transposing the EU Directive on Temporary Agency Work (/2008/104/EC) into Irish legislation was signed into law on 16 May 2012. It provides that all temporary agency workers must have equal treatment as if they had been directly recruited by the hirer from their first day at work.

Who is covered by this Act?

The Act applies to agency workers employed by an employment agency who are temporarily assigned to work for, and under the supervision and direction of, another organisation (the hirer).

Who is not covered by the Act?

The Act does not cover employees of contractor companies and limited liability companies where the worker is the beneficial owner. The Act may also exclude those employed under a managed service contract, which is a contract for services, for example, cleaning, where the contractor is responsible for managing and delivering the service.

The Act does not apply to work done on the Work Placement Scheme, JobBridge or any publicly-funded vocational training or re-training scheme specified by the Minister for Jobs, Enterprise and Innovation.

Employment and working conditions

Since 16 May 2012 temporary agency workers covered by the Act have the right to the same basic employment conditions as if they had been directly employed by the hirer under a contract of employment. Before taking on the agency worker the hirer must give the employment agency such information as it requires to comply with its obligations under the Act and indemnify the Agency if the information is incorrect. **The right to equal pay has retrospective effect to 5 December 2011.** These employment and working conditions are as follows:

Working time

This includes the duration of working time, rest periods, breaks, night work, annual leave and public holidays.

Pay

This is defined as basic pay, shift premium, piece work, overtime, unsocial hours worked, and Sunday work. The definition of pay in the Act does not include occupational pension schemes, sick pay, bonuses, maternity pay or benefit in kind. The right to equal pay is backdated to 5 December 2011.

Derogation

If the agency worker has a permanent contract with the agency and is paid a certain sum between assignments, equal treatment as regards pay does not apply.

Access to facilities

Temporary agency workers must have equal access to facilities such as childcare, canteen and car parking. They also must have equal access to information about permanent employment opportunities.

13. FIXED TERM EMPLOYEES

The objective of the Protection of Employees (Fixed-Term Workers) Act 2003, is to provide for the improvement of the quality of fixed-term workers by ensuring the application of the principle of non-discrimination so that fixed term workers may not be treated less favourably than comparable permanent workers. It also provides for the removal of discrimination against fixed-term workers where such exists and the establishment of a framework to prevent abuse arising from the use of successive fixed-term employment contracts.

Fixed-term employee means a person who has entered into a contract of employment where the end of the contract is determined by an objective condition such as, arriving at a specific date, completing a specific task or the occurrence of a specific event. The term “fixed-term employee” does not include employees in initial vocational training or in apprenticeship schemes or employees with a contract of employment concluded within the framework or publicly supported training, integration or vocational re-training programme.

The Act prohibits an employer from treating a fixed-term employee in a less favourable manner than a comparable permanent employee as regards his or her conditions of employment, unless the less favourable treatment can be justified on objective grounds (see section 6). A ground shall not be regarded as an objective ground unless it is based on considerations other than the status of the employee concerned as a fixed-term employee and the less favourable treatment is for the purpose of achieving a legitimate objective of the employer and such treatment is appropriate and necessary for that purpose (see section 7).

The Act defines “conditions of employment” as including conditions in respect of remuneration and matters relating thereto, including pension scheme arrangements. “Remuneration” includes any consideration, whether in cash or in kind, which the employee receives directly or indirectly from the employer in respect of his/her employment. The term has been interpreted broadly by the Irish and European Courts. It has been held to include payments which are either contractual or voluntary in nature and to include travel allowances, bonus payments, provision of a car, overtime payments, free accommodation option, skills allowance, redundancy lump sum payments, hire purchase loans and sick pay as well as payment of an ex-gratia lump sum on termination of employment.

There is an exception to the general prohibition on discrimination set out in Section 6(1) of the Act insofar as it relates to any pension scheme or arrangement. Section 6(5) provides that, “*Subsection (1) shall, in so far, but only in so far, as it relates to any pension scheme or arrangement, not apply to a fixed-term employee whose normal hours of work constitute less than 20 per cent of the normal hours of work of a comparable permanent employee*”. Therefore, a fixed-term employee may be treated in a less favourable manner in relation to a pension scheme arrangement if the employee’s normal hours of work are less than 20% of the normal hours of work of a comparable permanent employee.

A comparable permanent employee usually has to be employed by the same employer as the fixed-term employee or an associated employer. Where there is no permanent employee employed by the same employer or an associated employer then the comparator can be an employee employed in the same industry or sector of employment as the fixed-term employee. In some cases, the comparator can be set out in a collective agreement. In addition, one of the following three conditions must be met:

- Both employees perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work.
- Both employees perform the same or similar work and any differences are of small importance or occur with such irregularity as not to be significant.
- The work performed by the relevant fixed-term employee is equal or greater in value to the work performed by the other employee concerned.

(See section 5 of the Act for definition of comparable full-time employee).

Section 8(1) Act provides that a fixed-term employee shall be informed in writing by his/her employer as soon as practicable of the objective condition determining the contract, i.e. whether it is:

- (a) arriving at a specific date;
- (b) completing a specific task; or
- (c) the occurrence of a specific event.

The Act also provides that where an employer proposes to renew a fixed-term contract the employee shall be informed in writing, not later than the date of the renewal, of the objective

grounds justifying the renewal of the fixed term contract and the failure to offer a contract of indefinite duration (Section 8(2) of the Act).

Section 2(2)(b) of the Unfair Dismissals Acts 1977 to 2007 provides that it is possible to exclude the application of the Acts to fixed-term/specified purpose contracts provided the following conditions are met:

- the contract is in writing;
- it is signed by both parties;
- it clearly provides that the Unfair Dismissals Acts 1977 to 2007 will not apply to a termination consisting only of the expiry of a fixed-term contract or the cesser of a specified purpose contract.

However, it is important to note that there is an anti-abuse provision in the Unfair Dismissals Acts 1977 to 2007 which prevents an employer from avoiding liability for unfair dismissal by employing someone under a series of fixed-term contracts. Therefore, if a fixed-term contract comes to an end and the employee is re-hired to do the same work within three months on a further fixed-term contract which is subsequently terminated, then there will be deemed to be no break in continuity of service and the Unfair Dismissals Acts 1977 to 2007 will apply to the termination.

Where an employee is employed by his/her employer or associated employer on two or more continuous fixed-term contracts the aggregate duration of these contracts may not exceed four years unless there is objective justification for a renewal in excess of this period. The Act does not prescribe a maximum duration for a first fixed-term contract and so there is nothing to prevent an employer from entering into a single fixed-term contract for a period greater than four years. Where a term of an employment contract purports to limit the term of the employment contract in contravention of the above, that term shall be void, have no effect and the contract concerned shall be deemed to be one of indefinite duration – a permanent contract (see section 9 of the Act).

Apart from the requirements to provide a written statement as provided in section 8(1) of the Act (outlined above), there is no requirement on an employer to objectively justify a first fixed-term contract. This requirement arises on the renewal of a fixed-term contract. Notwithstanding this, in light of the case law, it is prudent for employers to address their minds at the initial stage of an appointment of an employee to a fixed-term contract to the rationale justifying the decision to enter into a fixed-term contract and not to engage an employee on a permanent basis. Employers should carefully assess the circumstances of each individual contract before deciding whether a fixed-term contract is appropriate, as this will inform any future decisions to renew the contract and the objective basis for it. It will not be satisfactory for an employer to retrospectively apply a reason for the renewal of a contract if that objective rationale was not demonstrable at the time of entry into the contract of employment.

There is prohibition of penalisation of an employee by an employer for invoking any right of the employee to be treated in respect of his employee's conditions of employment in the manner provided by the Act and this includes a dismissal of the employee or any unfavourable changes in his or her conditions of employment or unfair treatment including selection for redundancy or is the subject of any other action prejudicial to his or her employment (see section 13 of the Act). Penalisation can also arise in circumstance an employer terminates a fixed-term contract just before the four year threshold is reached, if it can be shown that the termination was solely for the purpose of avoiding the contract becoming a contract of indefinite duration.

An employee may refer a dispute in relation to an entitlement under the Act to a Rights Commissioner of the Labour Relations Commission for adjudication. The decision of the

Rights Commissioner can be appealed to the Labour Court for a legally binding determination.

Referral of Complaint

An employee may present a complaint to the Rights Commissioner if it appears that the employer has failed to provide an entitlement to which the employee is due under the Act. Written notice of the complaint must be presented within six (6) months of the date of the alleged contravention. The time limit for submitting a complaint for redress may be extended by a further twelve (12) months if the Right Commissioner is satisfied that the failure to present the complaint under the normal six (6) month period was due to a reasonable cause.

The Rights Commissioner may make a decision to do one or more of the following:

- declare that the complaint was or, as the case may be, was not well founded;
- require the employer to comply with the relevant provision of the Act;
- require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding two (2) years remuneration in respect of the employee's employment.

The employer or employee may appeal the Rights Commissioner's decision to the Labour Court within six (6) weeks from the date it was communicated to the parties.

14. HEALTH AND SAFETY

A huge body of legislation has developed on health and safety matters in the workplace in the last twenty years or so, mostly derived from European Union law. There are generally applicable rules and there are detailed directives and regulations dealing with particular sectors and situations. The following is an outline of the main provisions of the three most important pieces of legislation:

- Safety, Health and Welfare at Work Act, 2005 (as amended).
- Safety, Health and Welfare at Work (General Application) Regulations, 1993 (as amended).
- Safety, Health and Welfare at Work (General Application) Regulations, 2007 (as amended).

The 2005 Act provides that '[e]very employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees'.

The 2005 Act provides that an employer must put in place the necessary protective and preventative measures, having identified the hazards and assessed the risks to safety and health likely to result in accidents or injury to health at the place of work concerned.

The 2005 Act further provides that it should be for the employer to prove that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

The 2005 Act places a number of duties on an employer, to include the following:

- To manage and conduct work activities so as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of employees.
- To manage and conduct work activities so as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health or welfare at work of employees at risk.
- To ensure, so far as is reasonably practicable, that the design, provision and maintenance of the place of work, means of access to and egress from the place of work, plant and machinery and any other articles are safe and without risk to health.
- To ensure, so far as is reasonably practicable, the safety and the prevention of risk to health relating to the use of any article or substance or the exposure to noise, vibration, ionising or other radiations or any other physical agent.
- To provide systems of work that are planned, organised, performed, maintained and revised as appropriate so as to be, so far as is reasonably practicable, safe and without risk to health.
- To provide and maintain facilities and arrangements for the welfare of employees at work.
- To provide information, instruction, training and supervision necessary to ensure, so far as is reasonably practicable, the safety, health, and welfare at work of employees.
- To determine and implement safety, health and welfare at work measures to include identifying hazards, carrying out risk assessments, preparing a safety statement and ensuring that measures take account of changing circumstances.
- To provide and maintain such suitable protective clothing and equipment as is necessary to ensure, so far as is reasonably practicable, the safety, health and welfare at work of employees.
- To prepare and revise, as appropriate, adequate plans and procedures to be followed and measures to be taken in the case of an emergency or serious and imminent danger.
- To report accidents and dangerous occurrences to the Health and Safety Authority.
- To obtain, where necessary, the services of a competent person so as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of employees.

The 2005 Act further provides that an employer shall appoint at least one 'competent person' to be responsible for health and safety matters in the workplace and that such competent person be allowed adequate time, without loss of remuneration, to enable him/her to perform such functions as may be specified by the employer. The 2005 Act also provides that an employer must provide the competent person with information relating to those factors known or suspected by the employer to affect the safety, health and welfare of his/her employees, the risks, protective and preventative measures and activities in respect of the place of work and the work carried out there, and the employer's plans for dealing with emergencies or serious and imminent danger.

Safety representatives may be appointed by the employees from among their number at their place of work, and employers must notify the safety representatives when Health and Safety Authority inspectors visit.

Employers must carry out a risk assessment and prepare a safety statement. Furthermore, the employer is obliged to review its safety statement where there has been a significant change in the matters to which it refers, or there is any reason to believe that the safety statement is no longer valid, or an inspector of the Health and Safety Authority directs that the safety statement be amended.

Employees also have duties under the 2005 Act, which can be summarised as follows:

- To comply with the relevant statutory provisions and take reasonable care to protect his/her own safety, health and welfare and the safety, health and welfare of any other person who may be affected by the employee's acts or omissions at work.
- To ensure that he/she is not under the influence of an intoxicant to the extent that he/she is in such a state as to endanger his/her own safety, health or welfare at work or that of any other person.
- To submit to any appropriate, reasonable and proportionate tests for intoxicants by, or under the supervision of, a registered medical practitioner, if reasonably required by his/her employer.
- To co-operate so far as it is necessary to enable his/her employer or any other person to comply with the relevant statutory provisions.
- To not engage in improper conduct or other behaviour that is likely to endanger his/her own safety, health and welfare at work or that of any other person.
- To attend such training and undergo such assessment as may be reasonably required by his/her employer or as may be prescribed.
- To make correct use of any article or substance provided for use by the employee at work or the protection of his/her safety, health and welfare at work, including protective clothing or equipment, having regard to his/her training and the instructions given by his/her employer.
- To report to his/her employer, as soon as practicable, any work being carried on, or likely to be carried on, which may endanger the safety, health or welfare at work of the employee or that of any other person, any defect in the place of work, systems of work or any article or substance which might endanger the safety, health or welfare at work of the employee or of any other person, or any contravention of the relevant statutory provisions which may endanger the safety, health and welfare at work of the employee or that of any other person.

The Health and Safety Authority polices all of the legislation on health and safety in the workplace. Contravention of almost any aspect of the legislation is a criminal offence. An employee can complain to the Health and Safety Authority who has the power to prosecute either summarily or on indictment. Part 7 of the 2005 Act sets out specific offences and penalties that may arise for breach of the various duties and obligations under the 2005 Act.

The 2005 Act also provides that an employer shall not penalise or threaten penalisation against any employee who acts in compliance with the 2005 Act, or who performs any duty or exercises any right under the 2005 Act, or who makes a complaint or representation to his/her safety representative, his/her employer or the Health and Safety Authority as regards any matter relating to the 2005 Act.

An employee who feels aggrieved in this regard may complain to a Rights Commissioner of the Labour Relations Commission whose decision may declare that the complaint was or was not well-founded, require the employer to take a specific course of action and/or require

the employer to pay the employee such compensation as the Rights Commissioner may deem just and equitable in the circumstances. A decision of the Rights Commissioner may be appealed to the Labour Court and a determination of the Labour Court is enforceable by the Circuit Court.

Civil liability for employers may arise at common law.

The Health and Safety Authority has an extensive website (<http://www.hsa.ie/eng/>). A list of all the regulations is kept there, along with news of developments.

Examples of some of the areas covered by regulation are:

- Use of VDUs in offices.
- Construction site safety.
- Standards for workplace equipment.
- Conditions on fishing vessels.
- Risk assessment during night work or pregnancy.

15. DATA PROTECTION

Employment Records

Employers' data protection obligations are set out in the Data Protection Acts 1988 and 2003 ('the Acts'). The Data Protection (Amendment) Act, 2003 implements the European Data Protection Directive 95/46/EC. The Acts regulate how employers collect, store and use personal data held by them about their employees (past, prospective and current). More onerous obligations are imposed in respect of sensitive personal data, defined as data relating to a person's racial origin, political opinions or religious or other beliefs, physical or mental health, sexual life, criminal convictions or the alleged commission of an offence and trade union membership. Infringement of the Acts can lead to investigation by the Data Protection Commissioner, fines of up to €100,000 or compensation claims from affected employees.

Employers, as data controllers/processors, must ensure that sensitive personal data about their employees is collected and processed fairly, is kept accurate and up to date and is not kept for any longer than necessary. Appropriate security measures must be taken by employers against unauthorised access to, or alteration, disclosure or destruction of, personal data. Employers should have a Data Protection Policy in place including a data protection notice, a defined policy on retention periods for all items of personal data and provide appropriate staff training in data protection.

Employee Access to Data

Employees as data subjects have the right to make a subject access request. This entitles them, subject to certain limited exceptions, to be informed as to what personal data is held about them and to whom it is disclosed, to obtain a copy of their personal data and to have personal data amended or deleted where it is incorrect. Employers should respond to subject access requests as soon as possible or within 40 days from receipt of the written request. Subject access requests cover personal data held in manual and electronic form. Employers may charge up to €6.35 for supplying employees with a copy of their personal data.

Transmission of Data to Third Parties

Employers should not provide employees' data to third parties otherwise than in accordance with the principles and processing conditions set out in the Acts. It may be necessary to obtain express consent from the employee to such disclosure in the absence of a legitimate business purpose for the disclosure and depending on the nature of the information and the location of the third party. Where the data is being transferred to a third party within the European Economic Area (EEA) a written contract should be entered into, in which the recipient agrees to process the data in accordance with the instructions of the transferor and comply with the security obligations set out in the Acts. Where the third party is based outside the EEA, the Acts prohibit the transfer of data unless that country ensures an adequate level of protection for personal data or one of a series of limited exceptions apply. Where employee data is requested in the context of a commercial transaction, anonymised data should be provided where possible. If this is not possible, the recipient should be required to undertake in writing that it will only use the information in respect of the transaction in question, will keep it secure and will return or destroy it at the end of the transaction.

The website for the Data Protection Commissioner at <https://www.dataprotection.ie> is a useful source of additional information.

16. YOUNG PERSONS IN EMPLOYMENT

The Protection of Young Persons (Employment) Act, 1996 is designed to protect young workers and to ensure that work during the school year does not put a young person's education at risk.

The Act applies generally to employees under 18 years of age:

Child: under 16 years of age or the school leaving age (whichever is higher)
 Young person: 16-18 years of age

Conditions of employment, hours of work and rest periods

Maximum weekly working hours for those aged under 16 years:

Age	14	15
Term time	Nil	8
Holiday work	35	35
Work experience	40	40
During the summer holidays: under 16's must have at least 21 days free		

Time off and rest breaks for under 16's:

Half hour rest break: after 4 hours work
 Daily rest break: 14 consecutive hours off
 Weekly rest break: 2 days off, as far as practicable to be consecutive

Working hours, time off and rest breaks for 16-17 year olds:

Maximum working day: 8 hours
 Maximum working week: 40 hours
 Half hour rest break: after 4 ½ hours work
 Daily rest break: 12 consecutive hours off
 Weekly rest break: 2 days off, as far as practicable to be consecutive

Where someone under 18 works for more than one employer, the combined daily or weekly hours of work may not exceed the maximum hours set out above. Employers, young persons (i.e. 16 and 17 year olds) or parents, who help a breach of this law, may commit an offence.

Night and early morning work

Under 16's may not be required to work before 8.00 a.m. or after 8.00 p.m.

In general 16 and 17 year olds may not be employed before 6.00 a.m. or after 10.00 p.m.

During school holidays and on weekend nights 16 and 17 year olds who have no school the next day may work up to 11.00 p.m. where it is authorised by Ministerial Regulation and the only regulations made to date relate to Licenced Premises.

Before a child under 16 is employed, the parent or guardian must furnish written permission.

A register must be kept containing the following information on any person employed under 18:

- Full name
- Date of birth
- Time work begins each day
- Time work finishes each day
- Rate of wages/salary paid
- Total amount of wages/salary paid

Regulations under the Act require employers to give to their workers aged under 18 a copy of the official summary of the Act.

There are exemptions which relate to Workers at Sea, The Defence Forces, close relatives and Farming.

Children (i.e. under 16s) can be employed in cultural, artistic, sports or advertising work which is not harmful to the safety, health or development of the child and does not interfere with the child's attendance at school, where permission by licence has been received from the Minister for Enterprise Trade and Employment.

Duties of Employers

Before employing a young person or child an employer must see a copy of the birth certificate or other evidence of age and before employing under 16s an employer must get the written permission of a parent or guardian.

Complaints about infringement of this Act may be made to the Employment Rights section, Department of Jobs, Enterprise and Innovation.

Referral of Complaints

The parent or guardian of a child or a young person may present a complaint to a Rights Commissioner that an employer has contravened section 13 (preservation of existing rates of pay and condition) or section 17 (refusal by the child or young person to co-operate with the employer in breaching the Act).

A recommendation of a Rights Commissioner shall declare that the complaint was or, as the case may be, was not well founded, order the employer to take a specific course of action or order the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances.

17. EQUALITY IN EMPLOYMENT AND IN PROVISION OF GOODS AND SERVICES

Employment Equality Acts 1998 - 2011

The Employment Equality Acts 1998 - 2011 prohibit discrimination in employment on any of the nine protected grounds (gender, civil status, family status, sexual orientation, religious belief or lack of belief, age, disability, race including nationality, and membership of the Traveller community) and related conduct.

The Equality Act 2004 extended the scope of the 1998 Act by introducing the following provisions:

- provision for the extension of the scope of the 1998 Act to persons employed in a self-employed capacity;
- provision for the extension of positive action provisions to all nine grounds covered by the 1998 Act;
- provision for the extension of the age provision of the 1998 Act to persons under the age of 18 but over the minimum school leaving age and over sixty-five. Employers will still be allowed to set minimum recruitment ages of 18 or under and to set retirement ages;
- provision for the requirement on employers to provide reasonable accommodation for persons with disabilities to be, in future, subject to it not imposing a disproportionate burden rather than nominal costs;
- provision for the amendment of the redress provisions in respect of the defence forces in order to allow members of the defence forces access to the general redress mechanism in respect of all grounds covered by the 1998 Act (except age and disability).

Also the Social Welfare (Miscellaneous Provisions) Act, 2004 extensively amends the equality provisions of the Pensions Act, 1990. It prohibits discrimination based on any of the main protected grounds in regard to occupational pensions, with some exceptions, and to make substantial procedural changes.

Employment Equality Acts 1998 – 2011 (the “EEAs”)

Application

The EEAs apply to employers, advertisers of employment, employment agencies' trade unions, professional and trade bodies and providers of vocational training and both public and private sector employment. Broadly speaking, all stages and aspects of employment and employment-related training are covered. The main exception is occupational pensions, which are specifically excluded from the scope of the Act and fall instead under the Pensions Act, 1990 (gender discrimination only.) Agency workers are treated as employees.

The Acts apply to full time, part time and temporary employees, self-employed contractors, partners in partnerships, state and local authority office holders.

Requirements of the EEAs

The EEAs prohibit:

- Direct discrimination
- Indirect discrimination
- Discriminatory failure to provide equal pay for equal work (or work of equal value)
- Sexual harassment, or harassment based on any other protected ground
- Victimisation

The EEAs make it unlawful to discriminate in relation to employment, including:

- pay,
- conditions,
- promotion or re-grading or grouping of posts,
- vocational training,
- work experience,
- access to employment,
- dismissal, and
- collective agreements.

In addition, employers must provide *reasonable accommodation* for persons with disabilities. Reasonable accommodation means that an employer is obliged to take appropriate measures to enable a person who has a disability to have access to employment; participate or advance in employment; or to undertake training, unless the measures would impose a disproportionate burden on the employer. "What is disproportionate" will be relative to the size and resources of the employer.

Direct discrimination involves less favourable treatment based directly on the discriminatory ground. For example, a practice of not recruiting women would discriminate directly on the gender ground.

Indirect discrimination involves less favourable treatment which is not based directly on a discriminatory ground, but on an apparently neutral factor. The claimant must show that, in practice, this factor operates to disadvantage substantially more people in a protected category. For example, a practice of not recruiting employees with long hair might discriminate indirectly against women or against members of certain religions. The Act provides a justification defence. In cases to which European Community law applies, the respondent must show that the practice is objectively justified, i.e. that it is appropriate and necessary for reasons unrelated to discrimination. In other cases, it is enough to show that the practice is reasonable in all the circumstances.

Harassment is defined as conduct which is unwelcome to the victim and may reasonably be regarded as offensive, humiliating or intimidating, related to any of the nine grounds.

In June 2012 a new Code of Practice was introduced in relation to harassment and sexual harassment at work entitled Code of Practice (Harassment) Order 2012. It revokes the previous Code of Practice dating from 2002 and sets out the most up to date best practice for employers in relation to taking steps to prevent and eliminate harassment and sexual harassment in the workplace.

Victimisation is prohibited by the Employment Equality Acts and the Equal Status Acts 2000 - 2001. Victimisation occurs where dismissal or other adverse treatment of an employee is a reaction by the employer to the employee in good faith complaining about or opposing unlawful discrimination, bringing proceedings or assisting another person in bringing proceedings.

Equal Pay – The Acts provide for equal pay for like work. Like work is defined as work that is the same, similar or work of equal value. Equal pay claims can be taken on any of the nine discriminatory grounds.

Exceptions and exclusions

There are a number of detailed exceptions to the EEAs. The main general exceptions are persons not competent, capable and available to do the job (except where reasonable accommodation applies), positive action (which allows for positive action measures to prevent or compensate for disadvantages linked to any of the eight discriminatory grounds other than gender), and limited exceptions relating to family, gender, age or disability where the protected ground amounts to an occupational qualification, retirement or other benefits.

Vicarious liability

Under the Act employers may be vicariously liable for acts by their employees. There is a defence if employers can show they took “such steps as are reasonably practicable” to prevent conduct of this sort occurring.

Procedures

Practitioners’ attention is drawn to the time limits for lodging claims under the Act (section 77).

Right to Look for Information

Where a person believes they may have been subject to discrimination the person may ask for certain information which will assist in deciding whether to refer a claim under the Acts. Employers are not obliged to reply, but an Equality Officer may draw such inferences as appropriate from an employer failing to reply or supplying false, misleading or inadequate information.

Enforcement

The Equality Tribunal is the main forum of first instance for deciding claims under the EEAs. Claims referred to the Equality Tribunal under the Act may be investigated and decided by a Tribunal Equality Officer, or, where both parties agree, may be referred to the Tribunal Mediation Service. Full details, including a database of decided cases, are available at <http://www.workplacerelations.ie/en/>

The EEAs provides two alternative fora:

- A person who is claiming discrimination, victimisation, discriminatory dismissal or equal pay under the Act can refer their claim to the Equality Tribunal. A claim for redress must be brought within six months of the most recent occurrence of the act of discrimination or victimisation (or within 12 months where reasonable cause can be shown to prevent timely referral). An appeal to the Labour Court from a decision of the Director may be brought within 42 days.

- A claim of discrimination or equal pay on gender grounds only may be referred to the Circuit Court directly.

Redress

Decisions issued by the Tribunal are legally binding, with an appeal to the Labour Court within 42 days from the date of the decision. Mediated agreements are legally binding but are not published. Redress available in a decision of the Equality Tribunal can include:

- an order for compensation in the form of arrears of remuneration in respect of so much of the period of employment as begins not more than 3 years up to the date of the referral of the complaint;
- compensation for the effect of discrimination or victimisation (maximum limit of 104 weeks' pay);
- an order for equal remuneration from the date referred of the referral of the complaint;
- an order for equal treatment in whatever respect is relevant to the case;
- an order that a person or person specified take a specified course of action;
- an order for reinstatement or re-engagement with or without an order for compensation

The Circuit Court can award compensation of up to six years arrears of remuneration.

Other bodies

The Equality Authority is a separate and distinct body from the Equality Tribunal, charged with advocacy and public policy functions. It works with all those interested to develop equality policy and best practice. It can also provide advice and legal representation to any person who considers they have experienced unlawful discrimination. Further details are available on the Authority's website at <http://www.equality.ie/en/>

The Equal Status Act 2000

Deals with discrimination and related conduct in the provision of goods, services or facilities to the public or to a section of the public generally and is therefore beyond the scope of employment relationships. The scope is very broad, including disposal of interests in premises, access to and the use of places, banking, entertainment, education, transport or travel, accommodation, private clubs, professional services, and public services.

The protected grounds are gender, civil status, family status, sexual orientation, religious belief or lack of belief, age, disability, race including nationality, and membership of the Traveller community.

18. TRANSFER OF UNDERTAKINGS

European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003

The Regulations are aimed at safeguarding the rights of employees in the event of a transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer of merger.

These Regulations provide for:

- the rights and obligations arising from an employment contract or relationship or transfer from the original employer to the new employer;
- the new employer must continue to observe the terms and conditions of any collective agreement until it expires or is superseded;
- employees' pension rights in relation to old age, invalidity or survivors benefits under supplementary company or inter-company pension schemes do not transfer to the new employment. However, where there is a pension scheme in operation in the original employer's business at the time of the transfer, the Regulations provides that
 - if the scheme is an occupational pension scheme within the meaning of the Pensions Act, 1990, then the protections afforded by the Pensions Act apply to any such scheme, and
 - in respect of the pension schemes which do not come within the remit of the Pensions Act, the new employer must ensure that rights conferring immediate or prospective entitlement to old age benefits, including survivor's benefits, are protected.
- an employee may not be dismissed solely on the grounds of the transfer of an undertaking, business or part of a business by either the new employer or the old employer, however dismissals may take place for economic, technical or organisational reasons entailing changes in the workforce;
- if an employment is terminated because a transfer involves substantial deterioration in the working conditions of the employee, the employer concerned shall be regarded as having been responsible for the termination.

The original employer and the new employer must consult their respective employees not later than 30 days before the transfer occurs and in any event in good time and (in the case of the new employer) in any event, before his/her employees are directly affected by the transfer as regards their conditions of work and employment concerning:

- the reasons for the transfer;
- the legal, economic and social implications of the transfer for the employees; and
- the measures envisaged in relation to the employees.

If the new or old employer involved in a transfer envisage measures in relation to their employees, they must consult representatives of the employees where reasonably practicable not later than 30 days before the transfer occurs and in any event in good time on such measures with a view to seeking agreement. Representatives in relation to employees employed in an undertaking business or part of a business who are affected or likely to be affected by the transfer of undertaking business or part of a business means trade unions, staff association or excepted body with which it has been the practice of the employee's employer to conduct collective bargaining negotiations or in the absence of such a person or persons chosen under an arrangement put in place by the employer by such employees from among their number to represent them in negotiations with the employer.

An employee or trade union, staff association or excepted body on behalf of an employee may present a complaint to the Rights Commissioner that an employer has not complied with regulations in relation to information and consultation of employees.

19. DISMISSAL – TERMINATION OF EMPLOYMENT

Unfair Dismissals Acts 1977-2007

Aggrieved employees have a choice of legal remedy:

1. An action for wrongful dismissal in the civil courts where breach of contract or breach of constitutional rights is alleged. There is a 6-year limitation period; or
2. A claim within 6 months (12 months in “exceptional circumstances”) of the date of dismissal to the Employment Appeals Tribunal or Rights Commissioner under the Unfair Dismissals Acts 1977-2007.

Redress for unfair dismissal under the Unfair Dismissals Acts 1977-2007 apply to employees who:

- are employed under a contract of employment whether oral or in writing;
- have been dismissed or can prove that the employer's conduct was so unreasonable that resignation was justified;
- have one year's continuous service. This service is not necessary where dismissal is on grounds of pregnancy or related matters, race, age, religion or trade union activity
- are aged 16 years and over;

The Acts also apply to persons who are employed by or through employment agencies or directly by the employer.

Presumption of unfair dismissal

Once it is accepted that the employee was dismissed then the onus is on the employer to prove that the dismissal was not unfair. Certain specific grounds for dismissal are also deemed to be unfair:

- trade union membership/activity
- pregnancy or matters related
- exercising statutory maternity rights
- religious or political opinions
- age
- sexual orientation
- membership of the travelling community
- taking legal action against the employer

Grounds substantially justifying dismissal:

- capability, competence or qualification
- conduct
- redundancy provided selection criteria and procedures are fair
- other substantial reasons
- fixed term contracts and fixed purpose contracts (with certain exceptions).

Disciplinary Procedures under the Unfair Dismissals Acts

There is a legal obligation on all employers to supply all employees, not later than 28 days after commencing employment, with written procedures that the employer will observe before dismissing an employee. Any changes to the procedure must be notified to the employee within 28 days of the change being made.

The Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) Declaration Order, 2000, (S.I. 146/2000) sets out best practice on disciplinary and grievance procedures. Although the Code of Practice does not have mandatory effect, it is used by the courts and the Employment Appeals Tribunal as a “yardstick” against which an employer’s procedures can be measured.

According to this Code of Practice, the essential elements of any procedure for dealing with grievance and disciplinary issues are that they be rational and fair, that the basis for disciplinary action is clear, that the range of penalties that can be imposed is well defined and that an internal appeal mechanism is available.

Procedures should be reviewed and up-dated periodically so that they are consistent with changed circumstances in the workplace, developments in employment legislation and case law, and good practice generally.

Good practice entails a number of stages in discipline and grievance handling. These include raising the issue with the immediate manager in the first instance. If not resolved, matters are then progressed through a number of steps involving more senior management, HR/IR staff, employee representation, as appropriate, and referral to a third party, either internal or external, in accordance with any locally agreed arrangements.

The use of disciplinary procedures is strongly recommended to employers where an employee's conduct, attendance or performance is of concern. Failure to use or comply with procedures, of itself, may render the dismissal unfair.

Disciplinary action may include an oral warning, a written warning, a final written warning, suspension without pay, transfer to another task or section of the company, demotion, some other appropriate disciplinary action short of dismissal and dismissal.

The procedures adopted should normally include a set of graduated steps from verbal and written warnings to suspension on pay and eventually dismissal. There is no set rule about how many warnings there should be in any case. The test is: what would a reasonable employer do? The employer should follow the grievance procedure as set out in its company handbook or contract, if any. If appropriate, the employer should notify the employee of any shortcomings, suggest improvements and give a period of time in which to make the improvements. The employee should also be notified of the consequence of not making the improvements e.g. dismissal might be considered.

In cases of serious misconduct, it may be appropriate to move to a later stage of the procedure much more quickly.

If requested, an employer must give the reason(s) for dismissal in writing within 14 days of the request.

See Labour Relations Commission website: <http://www.lrc.ie/>

Procedures and Enforcement

A claim under the Unfair Dismissals Acts may be brought, in writing, to a Rights Commissioner or Employment Appeals Tribunal within 6 months of the date of any contravention (12 months in “exceptional circumstances”).

Redress:

- reinstatement, or
- re-engagement, or
- compensation to a maximum ceiling of 2 years' remuneration. “Remuneration” includes salary, benefits in kind (car, VHI, lodgings etc.) and employer's pension contributions.

Awards of compensation are usually based on the actual financial loss of the employee however in cases of no loss e.g. where the employee is immediately employed at the same salary the Tribunal has discretion to award up to four weeks remuneration.

20. REDUNDANCY – TERMINATION OF EMPLOYMENT

Redundancy Payments Acts 1967-2007

Protection of Employment Acts 1977-2007

Under the Unfair Dismissals Acts 1977-2007, the dismissal of an employee is an unfair dismissal unless, having regard to all the circumstances, there are substantial grounds justifying the dismissal. Redundancy is one such ground.

There are five alternative definitions of redundancy contained in the Redundancy Payments Acts 1967-2007. A dismissal due to redundancy may be justified where the circumstances giving rise to the dismissal fall within one or more of these five definitions, which are as follows:

- the fact that the employer has ceased, or intends to cease, to carry on the business for the purposes for which the employee was employed by him, or has ceased or intends to cease to carry on that business in the place where the employee was so employed; or
- the fact that the requirements of that business for the employee to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish; or
- the fact that the employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by the other employees or otherwise; or
- the fact that the employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforth be done in a different manner for which the employee is not sufficiently qualified or trained; or
- the fact that the employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforth be done by a person who is also capable of doing other work for which the employee is not sufficiently qualified or trained.

Once a genuine redundancy situation has been established, there is a further issue as to the fairness of selection of the employees to be made redundant. Selection for redundancy only arises where there are a number of employees “*in similar employment*”. If there are a

number of employees in the same role, then such employees should be 'pooled' for the purposes of selection for redundancy. If there are other employees who occasionally, or frequently, carry out the employee's functions, there may be a case for pooling these employees also. You would need to look at the particular circumstances very carefully.

Where selection issues do arise, the employer is obliged to use objective criteria for differentiating between one employee and another. The criteria should, insofar as possible, be capable of objective justification. Selection criteria could, for example, include length of service, performance, skills, technical competency, qualifications, training, occupation, relevant experience, future needs of the business and, potentially, attendance. All things being equal, and with no objective criteria to select one employee over another, an employer may resort to the "LIFO" rule (Last in First out). Ideally, the employer should have documentary evidence supporting the scores attributed under the respective criteria. Criteria must not be based on any of the nine discriminatory grounds (i.e. age, gender, religion, disability, race, civil status, marital status, membership of the Traveller Community or sexual orientation). Further, section 6(3) of the Unfair Dismissals Act 1977 provides that where an employer deviates from an agreed or customary selection procedure, a consequent redundancy dismissal will not be fair unless there were special reasons justifying the employer's departure from the procedure. Accordingly, employers must consider what selection criteria, if any, they have applied in the past, and whether there is good reason not to use the same criteria again.

While there is no process prescribed for implementing redundancies in a "non-collective" situation, under Irish legislation, all dismissals, including redundancy dismissals, have to pass a test of "reasonableness". Section 6(7) Unfair Dismissals Act 1977 provides that:

"in determining if a dismissal is an unfair dismissal, regard may be had... to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal, and... to the extent (if any) of the compliance or failure to comply by the employer in relation to the employee with [any dismissal procedure] or with the provisions of any code of practice".

In the context of redundancy, the requirement to act reasonably has been held by the Employment Appeals Tribunal to mean that an employer should engage in some form of consultation with employees at risk of redundancy regarding the potential redundancy situation. The redundancy should not be presented as a "fait accompli", but rather the employer should consult with the employee prior to any final decision being taken. An employer who does not engage in some form of consultation with an employee in advance, or who fails to consider if there are any options other than redundancy, will have difficulty defending an unfair dismissal claim.

Consultation should usually involve one or more meetings with the employee at risk before any decision is taken as regards the redundancy. The employer will be expected to show what consideration it gave to possible alternatives to redundancy. This would include considering any proposals that the employee puts forward. The potential for redeployment within the organization must certainly be explored, together with any other reasonable suggestions. For instance, where a reduction in the workforce is driven by economic motivation, the employer would need to consider suggestions by an employee for pay cuts, job-sharing, part-time etc.

Legal Entitlements

Where the employer decides to dismiss an employee who has more than 104 weeks' service by reason of redundancy, the legal entitlements of the employee to be made redundant are as follows:

- The employee must be given 2 weeks' notice in writing of the proposed dismissal. The statutory notice must be given to the employee using Part A of the Form RP50, which is a prescribed statutory form. Failure to comply with this requirement will render the employer liable to a fine of up to €5,000.
- During the 2 weeks' redundancy notice period, the employee is entitled to reasonable paid time off to look for new employment, or to make arrangements for training for future employment.
- The employee must also be given a redundancy certificate by the employer not later than the date of the dismissal. This takes the form of Part B of the Form RP50 which should be signed by both the employer and employee and then copied to the employee together with the statutory lump sum payment.

The original purpose of part B the Form RP50 was to confirm that the employee had been paid his/her statutory lump sum so that the employer could claim a rebate from the Social Insurance Fund. As the employer rebate was abolished in January 2013, the Form RP50 is now largely redundant. However, until the legislation is updated accordingly, it still remains a statutory requirement to provide same, and failure to comply is technically a criminal offence.

- An employee with over 104 weeks' continuous service is entitled to a statutory lump sum redundancy payment, which is calculated as two weeks' pay per year of service plus a bonus week. The figure for a weeks' pay is subject to a cap of €600.

Collective Redundancies

The procedure for large scale redundancies is laid down by the Protection of Employment Acts 1977-2007 ("the Protection of Employment Acts"). The Protection of Employment Acts set down certain procedural requirements that an employer must follow in the event of collective redundancies.

Collective redundancies mean dismissals arising from redundancy where, in any period of 30 consecutive days, the numbers being made redundant are:

- at least 5 in an establishment normally employing more than 20 and less than 50 employees;
- at least 10 in an establishment normally employing at least 50 but less than 100 employees;
- at least 10 per cent of the number of employees in an establishment normally employing at least 100 but less than 300 employees; and
- at least 30 employees in an establishment normally employing 300 or more employees.

In a collective redundancy situation, the employer is obliged to notify employees and the Minister for Jobs, Enterprise and Innovation at least 30 days before the proposed redundancies are due to take place. The employer must provide the Minister with certain prescribed information about the proposed redundancy. There is also an obligation to inform and consult with employee representatives at least 30 days prior to the redundancies taking effect. Importantly, the European Court of Justice decided in the *Junk* case in 2005 that a redundancy took effect when the redundancy notice issued, not when the notice period expired and the employment ceased, as had previously been assumed. The effect of the

judgment is that the consultation process must be completed before any redundancy notices can issue to the employees.

Where there is a failure to consult in a collective redundancy situation, an employee or employee representative may bring a complaint to a Rights Commissioner within 6 months of the alleged contravention (in exceptional circumstances, this period can be extended by a further 6 months). Where a Rights Commissioner finds that there has been a failure to consult, he or she may:

- make a declaration to that effect;
- require the employer to comply with the requirements to consult; or
- make an award of compensation to the affected employee up to a maximum of four weeks' pay per affected employee.

The recommendation of a Rights Commissioner may be appealed to the Employment Appeals Tribunal within 6 weeks of the date upon which the recommendation is communicated to the relevant parties.

An employer who fails to initiate consultation with the employees' representative; to supply them or the Minister with all of the relevant information, or to notify the Minister of the proposed redundancies is guilty of an offence and liable on conviction to a fine of up to €5,000.

An employer who implements a collective redundancy before the expiry of the 30 day notice period in relation to notification to the Minister is guilty of an offence and liable on conviction to a fine not exceeding €250,000.

An employer is also obliged to keep records of compliance with the Protection of Employment Acts for a period of not less than three years. Failure to do so is a criminal offence and will render an employer liable on conviction to a fine of up to €5,000.

The Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act, 2007 ("the 2007 Act")

The 2007 Act provides that dismissals by reason of compulsory collective redundancy shall not be deemed redundancies where the dismissed employees are replaced by new workers effectively doing the same job and performing the same tasks but on new terms and conditions of employment which are materially inferior. Any such proposed dismissals will be deemed "exceptional collective redundancies". The 2007 Act provides for the establishment of a Redundancy Panel, to which referrals can be made by any employee, employee representative or employer where it seems that a redundancy might constitute an exceptional collective redundancy. If the Redundancy Panel believes that that the redundancy is an exceptional collective redundancy, it will request the Minister to refer the matter to the Labour Court for final determination. Where the redundancy is determined by the Labour Court to be an exceptional collective redundancy, enhanced compensation of between 208-260 weeks' pay will be payable to each of the affected employees.

The 2007 Act also removed the upper age limit of 66 for entitlement to statutory redundancy payments.

21. INDUSTRIAL RELATIONS ACTS 1946 to 2012

The Industrial Relations Acts 1946 to 2012 contain a number of different mechanisms by which trade disputes may be referred to the industrial relations machinery of the State. In general terms, that machinery operates as follows:

- rights commissioners address disputes concerning individuals;
- the various branches of the Labour Relations Commission address collective disputes and
- the Labour Court acts as an appellate body from both rights commissioners and the Labour Relations Commission.

The Labour Court's jurisdiction in disputes under the Industrial Relations Acts 1946 to 2012 is, in most cases, limited to issuing recommendations which are intended to resolve disputes. Recommendations are not normally legally enforceable, though there are some exceptions.

The Labour Court has jurisdiction under the Industrial Relations (Amendment) Act 2001 (as amended) to issue determinations which are enforceable. This jurisdiction may only be exercised in specified circumstances. One requirement is that the Court must be satisfied that it is not the practice of the relevant employer to engage in collective bargaining negotiations in respect of the grade, group or category of workers who are party to the dispute. The procedure under this legislation is an alternative to, not an addition to, the practice of collective bargaining negotiations.

In circumstances where the Court has jurisdiction to hear a case under this legislation, the Court may ultimately make a determination which is akin to a mandatory injunction. This determination may require an affected employer to amend the terms and conditions of employment of the grade, group or category of workers. The Court may not make a determination which provides for arrangements for collective bargaining. Determinations are enforceable in the Circuit Court.

Employment and Equality Law Committee
Law Society of Ireland
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