

# DIPLOMA CENTRE

## Diploma in Education Law



### MODULE 1&2 EMPLOYMENT LAW IN THE SCHOOL CONTEXT

#### SESSION 1

#### TIME

#### DELIVERY

Friday 29 October 2021

10:00am – 4:30pm

Online Only

- 1 **Course introduction Part 1: Aims & objective of the diploma;** the history of education law in Ireland; sources of education law; a focus on relevant Constitutional provisions including Arts 42 and 44.
- 2 **Course introduction Part 2 – An overview of key issues arising:** Understanding the distinct role of the various decision makers – the Minister; the patron; the Board of Management; the principal. Types of issues - refusal of admission; student expulsion/suspension; admissions policy; codes of behaviour; bullying; staff recruitment and promotions; complaints against staff, staff misconduct/underperformance; fitness to teach; Section 29/Workplace Relations Commission.
- 3 **The contract of employment:** Identification of the employer in the school context. Express terms - the Terms of Employment (Information) Acts 1994 – 2001; pre-conditions; commencement; job function; exclusive service; probationary period; policies and procedures. Implied terms – sources; duty of care; trust and confidence; good faith & loyalty; mutual duty of respect; duty to provide a reference; terms implied by statute; collective agreements; pay and conditions; Department circulars.
- 4 **Termination of employment & unfair dismissals:** Unfair Dismissals Act 1977-2015; Circular 0060/2009; Circular 0071/2014; identification of the employer; capacity – long term absence; consistent short-term absences; possible equality claims; managing competence based issues; managing conduct based issues; teachers' use of social media; constructive dismissal; end of fixed term contracts; constructive dismissals; redress; redundancy; reference to higher and further education setting; managing an unfair dismissals claim: Workplace Relations Act 2015; new structure; jurisdiction issues; time limits.
- 5 **Termination of employment & unfair dismissals – case study on absence & sick leave management:** Independent medical examinations; challenging the validity of the absence; sick pay; termination of employment; service requirement; potential equality claims on the disability ground; reasonable accommodation; frustration of contract; potential personal injury claim; reporting structure. (30/40 mins)

6hrs. Gen. CPD

#### SESSION 2

#### TIME

#### DELIVERY

Saturday 30 October 2021

10:00am – 2:30pm

Online Only

- 1 **Managing employee bullying & harassment within schools:** Increase in cases; existing personal injuries framework; Sutherland v Hatton: foreseeability; risk assessments - preventative measures and acting when on notice of bullying; internal policies; one-off incident; formal or informal process? Recognisable psychiatric injury; reasonable foreseeability; overlapping claims.
- 2 **Application of grievance & disciplinary procedures:** Grievance procedures – as they apply to different schools and personnel; when and how the procedures are to be utilised; fair procedures. Disciplinary procedures - the Education Act and Circular 0060/2009; Circular 0071/2014; stages of the procedures; fair procedures; case law.
- 3 **Recruitment of teachers:** Overview of the employment relationship; equality provisions relevant to recruitment; the recruitment process; the advertisement; application forms; the interview; selection criteria; taking notes; giving reasons; pre-contract issues; references; medical information; background checks; non-permanent teachers. Promotion of staff & appointment procedures for principals. (1.5 hours)
- 4 **Ancillary Staff:** Employment law issues relevant to ancillary staff such as secretaries, cleaners and caretakers. A focus on how recruitment, contractual, equality law and dismissal provisions apply to such staff. The lecture will also provide a basic introduction to the application of the Transfer of Undertaking Regulations in the school context.

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- 5 Equality in the school workplace Part 1:** The Employment Equality Acts 1998–2015; the nine grounds of discrimination; prohibited discriminatory conduct; disability; age discrimination; victimisation; harassment and sexual harassment; gender and pregnancy; scope of s.37 with regards to “*undermining the religious ethos*” of the school.
- 6 Equality in the school workplace Part 2 –** A focus on disability discrimination: Definition of disability; alcoholism as a disability; hypertension; disability and sickness; medical opinion; reasonable accommodation; *Humphrey’s v Westwood*; prospective employees; ‘disproportionate burden’; size of employer and financial assistance.

6hrs. eCPD

### MODULE 3: ADMISSIONS POLICIES & STUDENT CONDUCT

#### SESSION 03

#### TIME

#### DELIVERY

Tuesday 4 January 2022

10:00am – 4:30pm

Online Only

- 1 Admissions Policies:** Position prior to 1998; admission and participation policy; admission of child to recognised school; prohibition on discrimination by educational establishments; SEN – an inclusive education policy; contents of admission policies; possible criteria; indirect discrimination (*Stokes v Christian Brothers High School*).
- 2 The Education (Admission to Schools) Act 2018:** Purpose of the Bill; accountability of principal; regulatory framework; admission statement; admission policy; approval by patron; characteristic spirit of the school; religious instruction; grounds for not enrolling students; selection criteria; appealing a decision; prohibition on charging and enrolment fees; Regulations.
- 3 Codes of behaviour & school disciplinary procedures Part 1:** The Education (Welfare) Act, 2000; s.23 code of behaviour; Guidelines; status of the Guidelines; structure of the Guidelines; auditing and reviewing of the Code; foundations of an effective Code; developing a School Code to manage behaviour effectively (setting standards of behaviour responding to inappropriate behaviour, promoting good behaviour).
- 4 Codes of behaviour & school disciplinary procedures Part 2: suspension & Expulsions:** Three statutory requirements and related case law including the *O’Donovan* decision
- 5 Codes of behaviour & school disciplinary procedures Part 3:** Section 29 appeals – what the State can and cannot do.
- 6 Student use of social media –** The concept ‘in school behaviour’; peer-to-peer bullying on social media; liability; commenting on teachers; parental use of social media; subjecting teachers to comments on social media. etc.

6hrs. Gen. CPD\*

### MODULE 4: SCHOOL STRUCTURES & GOVERNANCE

#### SESSION 04

#### TIME

#### DELIVERY

Wednesday 05 January 2022

10:00am – 4:30pm

Online Only

- 1 Legislative framework and structure and role of the Boards of Management:** Historical context; separation of church & State; the Education Act 1998 (as amended): position prior to the 1998 Act; context of the Act; function of Minister; recognition of schools; annual funding; the patron; the Inspectorate; the Board of Management; default provisions; keeping of accounts and records; report and information; the School Plan.
- 2 Key stakeholders & misc. provisions:** Functions of the principal and teachers; provisions relating to staff; parents association; information to students and Student Council; grievance and other procedures; s. 28 proposals; appeal to Secretary General.

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- 3 **The role of the unions in the school context:** Right of association; structure of the unions; types of services provided to teachers, principals and SNA; role with the Teaching Council and other education stakeholders.

3hrs. Gen. CPD

- 4 **Workshop 1:** Practical application through case studies and drafting exercises of issues encountered in lectures relating to employment and equality law issues relevant in the school context.

2.5hrs M&PD

### MODULE 5 & 6: NEGLIGENCE & LITIGATION MANAGEMENT/PROVIDING FOR SPECIAL EDUCATIONAL NEEDS

SESSION 05	TIME	DELIVERY
Friday 25 February 2022	12:00am – 4:30pm	Online Only
1 <b>Data protection in schools – Part 1 - An introduction:</b> Origins of; personal data; sensitive personal data; data controller; legitimate processing and retention of data; data subject rights & notification requirements; Government data & public sector bodies; sharing between public bodies; data protection vs freedom of information;; Data Protection Officer; data breaches.		
2 <b>Data protection in schools - Part 2 – Case Studies</b>		
3 <b>Managing safety and health in schools:</b> Key provisions of the 2005 Act; risk assessments; Safety Statements; employer and employee obligations; penalties; personal liability; guidelines on managing safety and health in schools; school profile; roles & responsibilities; planning documents; risk assessment templates.		
4 <b>Providing for special educational needs Part 1:</b> Constitutional considerations and legislative provisions - historical development; Education for Persons with Special Educational Needs Act 2004; seminal case law.		
5 <b>Providing for special educational needs Part 2:</b> School policies and procedures for special educational needs - identification of special educational needs; special education plans; special education appeals board.		

5hr. CPD

SESSION 06	TIME	DELIVERY
Saturday 26 February 2022	10:00am to 12:30pm	Online Only
1 <b>Introduction to Family Law and Schools:</b> Guardianship, Parental Dispute regarding educational matters and the impact of family law proceedings on schools.		

1 hrs. Gen. CPD

- 2 **Workshop 2:** Practical application through case studies and drafting exercises of issues encountered in relating issues for codes of behaviour & school disciplinary procedures: suspension & Expulsions

3.5hrs. M&PD CPD

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### MODULE 7&8: HIGHER, FURTHER & ADULT EDUCATION/COMPLIANCE MATTERS & MISC. PROVISIONS

SESSION 07	TIME	DELIVERY
Friday 8 April 2022	11:30am to 5:00pm	Online Only

- 1 Negligence and litigation management Part 1:** The duty of care to include the standard of care expected of school staff; negligence in schools- vicarious liability/contributory negligence; supervision-degree of care-student maturity; physical education-School tours-Extracurricular activities
- 2 Negligence and litigation management Part 2:** When does a school start and finish?; occupiers Liability; the Safety & Health at Work Act 2005; insurance
- 3 Introduction to higher, further and adult education,** including a background to such institutions and the governance structures that apply.
- 4 Employment law issues in the higher, further and adult education sector.**
- 5 Child protection obligations Part 2**
- 6 Child protection obligations Part 1**
- 7 Issues relevant to international students in the higher, further and adult education sector**

**7hrs. Gen. CPD**

SESSION 08	TIME	DELIVERY
Saturday 09 April 2022	10:00am to 1:30pm	Online Only

- 1 Student conduct issues in higher, further and adult education.**

**1 hrs. Gen. CPD**

- 2 Workshop 3:** Interactive session problem based scenarios based on previous exam paper. Onsite attendance required as workshop is not webcast

**2.5hrs. Gen. CPD**

**Please note that topics & dates may be subject to change. Draft timetable as of May 2021.**

\* Gen = General, M&PD = Management and Professional Development, Reg = Regulatory and eLearning = eLearning CPD credits. **CPD Note:** The number of hours of CPD that you may claim in relation to your diploma/certificate course will depend on the way in which you access each of the individual sessions. For further information please visit the course homepage on our website: [www.lawsociety.ie/diplomacentre](http://www.lawsociety.ie/diplomacentre)