



Relate

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The journal of developments in social services, policy and legislation in Ireland

Workplace Relations Act 2015

The Workplace Relations Act 2015 provides for a range of changes to the bodies and procedures which deal with:

- The resolution, mediation and adjudication of industrial disputes and
- The resolution of complaints about breaches of employment legislation

It provides for a new Workplace Relations Commission which will take over the functions of the National Employment Rights Authority, the Labour Relations Commission (LRC), some of the functions of the Employment Appeals Tribunal (EAT) and the functions of the Director of the Equality Tribunal. The appeal functions of the EAT are being transferred to the Labour Court. In effect, there will be two statutory bodies instead of the current four. The National Employment Rights Authority is not a statutory body. There will be one body – the Workplace Relations Commission – to which all industrial relations, employment law and employment equality disputes and complaints are referred. Appeals will be made to the Labour Court in all cases. Time limits for the making of appeals are being generally standardised.

The Act also provides for a number of changes to a range of employment laws and for new compliance measures. It amends 24 Acts and numerous Statutory Instruments. These amendments do not affect cases which are before a Rights Commissioner or the EAT when the Act comes into effect.

The Act will be commenced on 1 October 2015. Some administrative arrangements have already been put in place in advance of its implementation. For example, there is a central system for receiving complaints which are then referred to the appropriate body and some services are shared by the bodies concerned.

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Here we briefly describe the current arrangements for dealing with employment disputes and the main changes that are being introduced by the Act.

Current arrangements

The following is a brief summary of the current arrangements for dealing with industrial relations and employment law disputes. Further information is available at: workplacerelations.ie

National Employment Rights Authority (NERA)

NERA was set up on an administrative basis in 2007. It aims to ensure compliance with employment rights legislation. It employs inspectors and authorised officers who have powers under various employment laws to carry out workplace inspections to ensure compliance with the relevant law. Employers are given a time period within which to rectify any breaches. If necessary, employers who are in breach of the legislation may be prosecuted.

NERA has a specific role in relation to monitoring the implementation of the Protection of Young Persons (Employment) Act 1996. Under the Act, it may grant licences to employers to employ young people in cultural, artistic, sports or advertising work.

It has a role in enforcement of awards made by the EAT and the Labour Court.

It also provides an information service on all aspects of employment laws.

Labour Relations Commission (LRC)

The LRC is mainly concerned with industrial relations disputes. It has a general role in improving industrial relations. It issues codes of practice on various aspects of workplace relations; for example, it has issued a code of practice on procedures for addressing bullying in the workplace. It provides a range of industrial relations services including a conciliation service through conciliation officers (sometimes known as industrial relations officers), a workplace mediation service and advisory and training services. It assists Joint Labour Committees and Joint Industrial Councils in carrying out their functions.

Rights Commissioners

Rights Commissioners are part of the LRC and are independent in their activities. They investigate disputes, grievances and claims that individuals, or small groups of workers, make under various employment laws. These include not only laws such as those on leave and working time but also includes the various laws on victimisation of whistleblowers.

Employment Appeals Tribunal (EAT)

The EAT is the statutory body that deals with disputes under a range of employment laws including the laws dealing with redundancy, unfair dismissals, minimum notice, organisation of working time, and the laws dealing with various types of leave.

Equality Tribunal

The Equality Tribunal investigates complaints in relation to equal treatment in employment under the Employment Equality Acts 1998 to 2011 and in relation to goods and services under the Equal Status Acts 2000 to 2012. It employs equality officers and equality mediation officers.

Labour Court

The Labour Court provides a service for the resolution of industrial relations disputes. It establishes Joint Labour Committees and registers Joint Industrial Councils.

It also makes legally-binding determinations under employment laws such as those dealing with equality, pensions, organisation of working time, national minimum wage, part-time work, fixed-term work, and safety, health and welfare at work.

How complaints and appeals are dealt with

The different employment laws have different arrangements for processing complaints and appeals. The following are the main laws involved and the pathways for their complaints and appeals.

Rights Commissioner/EAT

You may complain to a Rights Commissioner about breaches of the following Acts and, if not satisfied with the outcome, appeal to the EAT:

- Adoptive Leave Acts 1995 and 2005
- Carer's Leave Act 2001
- European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003
- Maternity Protection Acts 1994 and 2004
- Parental Leave Act 1998
- Payment of Wages Act 1991
- Protection of Young Persons (Employment) Act 1996 (in relation to the penalisation by an employer of an employee who refuses to do something which is unlawful under the Act)
- Protection of Employment Acts 1977 to 2014 and the European Communities (Protection of Employment) Regulations 2000
- Terms of Employment (Information) Acts 1994 to 2014

Rights Commissioner/Labour Court

You may complain to a Rights Commissioner about breaches of the following Acts and, if not satisfied, appeal to the Labour Court:

- Organisation of Working Time Act 1997; it should be noted that disputes in relation to holidays may be joined with other disputes and heard by the bodies which are dealing with the other dispute
- National Minimum Wage Act 2000
- Protection of Employees (Fixed-Term Work) Act 2003
- Protection of Employees (Part-Time Work) Act 2001

EAT/High Court

You may complain to the EAT about breaches of the following Acts:

- Minimum Notice & Terms of Employment Act as amended
- Protection of Employees (Employers' Insolvency) Act as amended
- Redundancy Payments Act 1967 as amended

You may then make an appeal to the High Court on a point of law.

Unfair dismissals

Under the Unfair Dismissals Acts 1977 to 2007 you may complain to a Rights Commissioner and, if not satisfied, you may appeal to the EAT. Alternatively, you may complain to the EAT and, if not satisfied, appeal to the Circuit Court.

Equality legislation

Under the Employment Equality Acts and the equality provisions of the Pensions Acts, you may complain to the Equality Tribunal and, if not satisfied, appeal to the Labour Court. The Labour Court also hears appeals of equality and human rights compliance and substantive notices issued by the Irish Human Rights and Equality Commission.

The Equal Status Act 2000 deals with discrimination in goods and services. You may complain to the Equality Tribunal about breaches of the Act and, if not satisfied, appeal to the Circuit Court.

The new arrangements

The Workplace Relations Act 2015 provides that there will be two bodies dealing with complaints and disputes in relation to industrial relations and employment law – a new body called the Workplace Relations Commission (WRC) and the Labour Court.

The Labour Relations Commission is being abolished and all its functions transferred to the WRC. The functions of the Equality Tribunal (including its functions under the Equal Status Act) are also being transferred to the WRC.

The Employment Appeals Tribunal is being abolished. Its functions in relation to claims for redress, disputes or complaints are being transferred to the WRC (these mainly arise under the Redundancy Payments Act 1967, the Unfair Dismissals Act 1977 and the Minimum Notice and Terms of Employment Act 1973). Its functions in relation to appeals are being transferred to the Labour Court.

The EAT will continue to function until it completes the cases which are before it when this Act comes into effect. It will then be dissolved. The EAT currently has about 3,500 cases on hand. The average waiting time for a hearing before the EAT is currently 63 weeks.

The Labour Court will continue in existence with a number of different functions and will be expanded. The current members will remain in place. In future, appointments as chair and deputy chairs will be by public competition. When vacancies arise for ordinary members, trade union and employer organisations will nominate three candidates and the Minister for Jobs, Enterprise and Innovation will choose one.

Workplace Relations Commission

The WRC will have a board consisting of a chairperson and eight other members. Representatives of employers and employees will have two members each; one member will be from a body which seeks to promote equality in the workplace and three members will be people who have experience and expertise in relation to workplace relations, resolution of disputes in the workplace, employment law or equality law.

The main functions of the WRC are to:

- Promote the improvement of workplace relations, and maintenance of good workplace relations
- Promote and encourage compliance with the relevant laws
- Provide guidance in relation to compliance with codes of practice
- Conduct reviews of, and monitor developments as respects, workplace relations
- Conduct or commission relevant research and provide advice, information and the findings of research to Joint Labour Committees and Joint Industrial Councils
- Advise the Minister for Jobs, Enterprise and Innovation in relation to the application of, and compliance with, relevant laws

- Provide information to the public in relation to employment laws other than the Employment Equality Act (information about this Act is provided by the Irish Human Rights and Equality Commission – see *Relate*, March 2015)

The WRC may also provide advice on any matter relating to workplace relations to employers, their representative bodies and to employees, trade unions or other representative bodies of employees.

The WRC also has specific functions in relation to the resolution of industrial disputes and the implementation of employment laws. It will be the body to which all industrial relations disputes and all disputes and complaints about employment laws will be presented.

Dealing with complaints and disputes

The WRC will employ mediation and adjudication officers to deal with industrial disputes and complaints about non-compliance with employment laws.

Who may complain

Complaints may be presented in respect of a large number of employment laws including Acts and Statutory Instruments. These are listed in the Act. They include the laws on redundancy, unfair dismissal, minimum notice, minimum wage, hours of work and holidays. They also include a number of the laws dealing with protection for whistleblowers.

The complaint may be made by the person directly affected, that is, the direct complainant or, in some cases, by a specified person acting on behalf of the direct complainant. A specified person is a person who is named in the relevant employment law as being entitled to present a complaint or refer a dispute.

An employee or an employer (or, with consent, a specified person) may refer certain disputes about an employee's entitlement under the following Acts:

- Maternity Protection Act 1994
- Adoptive Leave Act 1995
- Parental Leave Act 1998
- National Minimum Wage Act 2000
- Carer's Leave Act 2001

An agency worker or a trade union of which the agency worker is a member may refer a complaint that the agency or the hirer has contravened certain sections of the Protection of Employees (Temporary Agency Work) Act 2012.

Mediation officers

Complaints and disputes will initially be presented in writing to the Director General of the WRC. The Director General may refer the complaint or dispute to a mediation officer if it is considered that the complaint or dispute is capable of being resolved without being referred to an adjudication officer and if neither of the parties objects to it being dealt with in this way. This is a similar arrangement to the early resolution and mediation services offered by the LRC and the mediation service provided by the Equality Tribunal. The mediation officers, equality mediation officers and conciliation officers currently employed by the LRC and the Equality Tribunal will transfer to this role in the WRC. Mediation is conducted in private. If agreement is reached as a result of the mediation, that agreement is legally binding on the parties.

Adjudication

If mediation is not used or is not successful, the complaint or dispute is referred to an adjudication officer. The current Rights Commissioners and equality officers will be adjudication officers. A further 19 adjudication officers are being appointed. References in existing legislation to a Rights Commissioner now refer to an adjudication officer.

If the dispute or complaint is referred to an adjudication officer, the adjudication officer then generally conducts an inquiry. The adjudication officer may dismiss a complaint or dispute if it is considered to be frivolous or vexatious. Such a decision may be appealed to the Labour Court within 42 days.

The Director General may decide to deal with the complaint or dispute by written submissions only, unless either party objects to this within 42 days of being informed.

At the inquiry, the parties have an opportunity to be heard and to present any relevant evidence. Hearings by an adjudication officer will be in private. Hearings by Rights Commissioners have been held in private but EAT hearings have been in public.

Complainants may be accompanied and represented at hearings before an adjudication officer by:

- A trade union official or an official of a body which represents the interests of employers
- A practising barrister or practising solicitor
- In the case of a complainant who is less than 18 years of age, a parent or guardian (as well as one of the people already listed)
- Any other person with the permission of the adjudication officer

The adjudication officer then makes a decision in accordance with the relevant law and gives that decision in writing to the parties.

Decisions by adjudication officers will be published on the internet without identifying the parties.

Time limits

In general, an adjudication officer will only consider a complaint or dispute if it is presented to the Director General within six months of the date of the alleged contravention. This time limit may be extended by a further six months if there was a reasonable cause for the delay. There are specific provisions about when the time limits begin to run in cases of disputes about adoptive leave, maternity leave, parental leave and carer's leave.

In the case of disputes about an employee's entitlements under the National Minimum Wage Act 2000, the time limit starts to run from the date on which the employee gets a statement of their average hourly rate of pay in respect of the relevant pay period. If the employee has asked for such a statement and does not get one, the time limit starts to run from the day after the date on which the statement should have been provided. In a dispute about a reduction in hours of work without an accompanying reduction in amount of work, the time limit runs from the date on which the hours were reduced.

Enforcement of decision of adjudication officer

The employer has 56 days in which to carry out the decision of the adjudication officer. If the employer fails to do so, the employee, the WRC, the employee's trade union or excepted body (an excepted body is a body that represents the interests of a particular group of workers) may apply to the District Court for an order directing the employer to do so. In general, the District Court must make the order. If the decision was to reinstate or re-engage the employee, the District Court may substitute an order to pay compensation of up to 104 weeks' pay calculated in accordance with the rules under the Unfair Dismissals Act 1977 to 2007.

In all cases involving compensation, the District Court may also order interest to be paid.

It is an offence to fail to comply with an order directing an employer to pay such compensation to an employee unless the employer can show, on the balance of probabilities, that they were unable to comply with the order due to financial circumstances.

Appeal to Labour Court from decision of adjudication officer

Appeals against decisions of adjudication officers may be made to the Labour Court. Such appeals must generally be made within 42 days but this can be extended if the Labour Court is satisfied that there were exceptional circumstances causing the delay.

The Labour Court may decide to deal with the complaint or dispute by written submissions only, unless either party objects to this within 42 days of being informed.

Labour Court hearings on appeals are in public unless the Labour Court decides that they should be in private (or partly in private) because of special circumstances. Parties are entitled to be represented at Labour Court hearings in the same way as at hearings before an adjudication officer.

The Labour Court has wide powers to require witnesses to attend and to take evidence on oath.

The Labour Court may refer a question of law arising in the appeal to the High Court. The High Court's determination is final and conclusive.

Either party may appeal the decision of the Labour Court to the High Court on a point of law. Such an appeal must be made within 42 days. The decision of the High Court is final and conclusive.

Enforcement of decision of Labour Court

An employer has 42 days to implement the Labour Court's decision. If the employer fails to do so, the employee, the WRC, the employee's trade union or excepted body may apply to the District Court for an order directing the employer to do so. The District Court must grant the order. In cases where compensation is to be paid, the District Court may also order the payment of interest. It is an offence to fail to comply with an order directing an employer to pay such compensation to an employee unless the employer can show, on the balance of probabilities, that they were unable to comply with the order due to financial circumstances.

Enforcement of employment legislation

The authorised officers and inspectors who are currently employed by the National Employment Rights Authority will continue to have a similar role with the WRC. New arrangements for prosecutions and new compliance measures are introduced by the 2015 Act.

Inspectors have extensive powers to collect documentary and personal evidence in relation to alleged breaches of workplace

legislation. This includes the power to enter premises, see and/or remove documents and interview people. If necessary, inspectors may be accompanied by other inspectors or members of An Garda Síochána. They may apply to the District Court for search warrants. Their powers under the various employment laws are restated and consolidated in the Workplace Relations Act 2015.

Prosecutions

The Minister for Jobs, Enterprise and Innovation has the power under a number of employment laws to bring summary prosecutions against employers who are alleged to be in breach of the law concerned. These powers are being transferred to the WRC.

Costs in prosecutions

The Act provides that, where a person is convicted of an offence under it, the court must order that person to pay the WRC the costs and expenses incurred by it in relation to the investigation, detection and prosecution of the offence unless the court is satisfied that there are special and substantial reasons for not doing this. This does not apply to the offence of refusing or failing to pay compensation when ordered to do so by the District Court when that court is enforcing a decision of an adjudication officer or the Labour Court.

Compliance notice

The Act provides for the serving of compliance notices. This is a new procedure. An inspector may serve a compliance notice on an employer if satisfied that a contravention of the relevant legislation has occurred. This notice specifies how that contravention is to be rectified. An employer may appeal against the compliance notice to the Labour Court within 42 days. There is a further appeal from the decision of the Labour Court to the Circuit Court. It is an offence for an employer to fail to comply with a compliance notice.

The existence of a compliance notice or any dispute about it does not prevent employees from taking action in relation to any alleged breach of employment law in respect of them. Neither does it prevent any prosecution for an offence under employment laws.

Compliance notices may be used in relation to breaches of the following legislation:

- Notice to employees of procedure for and grounds for dismissal under the Unfair Dismissals Act 1977 to 2007
- Regulation of certain deductions made and payments received by employers under the Payment of Wages Act 1991

- Leave on health and safety grounds under the Maternity Protection Acts 1994 and 2004
- Requirement to give an employee a written statement of terms of employment and requirement to give written notice of changes to those terms under the Terms of Employment (Information) Acts 1994 to 2014
- A range of possible breaches of the Organisation of Working Time Act 1997 including those in relation to rest periods, Sunday work, working hours, information on working time, zero hours contracts and holidays
- Protection of employment rights under the Carer's Leave Act 2001
- Obligation of hirers to agency workers under the Protection of Employees (Temporary Agency Work) Act 2012

Fixed payment notices

The Act provides for using fixed payment notices for certain offences. Again, this is a new procedure. Inspectors may issue fixed payment notices for amounts up to €2,000 where they have reasonable cause to believe that a person has committed a relevant offence. The fine must be paid within 42 days. The relevant offences are:

- Breaches of the obligation on employers to consult representatives of employees and to provide information to them under the Protection of Employment Act 1977 (collective redundancies)
- Failure to provide statement of wages and deductions from wages under the Payment of Wages Act 1991, or
- Failure to provide employee with statement of average hourly rate of pay for pay reference period under the National Minimum Wage Act 2000

General powers of the WRC

The WRC inspectors and adjudication officers have various powers to get information from employers and employees and to provide that information to other official bodies. For example, they may:

- Require employers to disclose their registration number and employees to provide their PPSN and to disclose these numbers to official bodies for the purposes of investigating or prosecuting alleged offences under employment law
- Disclose information to public contracting authorities that a person with whom that authority has entered into a contract (either a primary contractor or a party to a secondary contract) has been in breach of employment legislation and may require such an authority to disclose similar information to them

The WRC may make arrangements with other official bodies to facilitate administrative co-operation. It may also enter arrangements with foreign statutory bodies for the exchange of information relevant to its functions and for the provision of mutual assistance.

Codes of practice

The WRC may prepare codes of conduct for the guidance of employers, employees and others affected by employment laws. It does not have this function in relation to the Employment Equality Act 1998; codes of practice in relation to that Act are the responsibility of the Irish Human Rights and Equality Commission.

Fees

The Act allows for the charging of fees for services provided by the WRC and the Labour Court. The Minister has said that it is not the intention to introduce such fees in general. However, it is intended to introduce a fee of €300 for an appeal to the Labour Court where the party who is appealing had not turned up to a hearing at the WRC. If that party can show that there was good cause for the failure to appear at the initial hearing, the fee will be refunded.

Changes to specific laws

Virtually all employment laws are changed to some extent by this Act because the enforcement procedures are changed. There are some other specific changes.

Unfair Dismissals Act

Claims in relation to unfair dismissals could be dealt with by a Rights Commissioner if both parties agree or by the EAT if they do not. They will now be brought to the WRC and dealt with

by an adjudication officer. The adjudication officer's decision may be appealed to the Labour Court. The Labour Court's decision may be appealed to the High Court on a point of law. The Circuit Court's jurisdiction on appeals will no longer apply.

Employment Equality Act

The functions of equality officers are transferred to the WRC. The role of the Director of the Equality Tribunal is being taken over by the Director General of the WRC.

Equal Status Act

The Equal Status Act is not an employment Act. It deals with discrimination in relation to goods and services. Complaints of breaches are made at present to the Equality Tribunal and appeals from the Equality Tribunal decisions may be made to the Circuit Court. When this Act is in effect, complaints will be made to the WRC but appeals will still be made to the Circuit Court.

Organisation of Working Time Act 1997

The Organisation of Working Time Act 1997 is amended to provide for the new mechanisms for dealing with disputes and complaints. It is also amended to take account of the ruling of the Court of Justice of the European Union in the Schultz-Hof case (**C-350/06 <http://curia.europa.eu/juris/documents.jsf?num=C-350/06>**) regarding how time spent on sick leave should be treated for the purposes of the accrual of annual leave. This means that, if you are on long-term sick leave, you may accrue and retain annual leave for up to 15 months from the end of the year in which it accrued. If you leave employment and you have accrued such annual leave entitlements you are entitled to payment in lieu.

Proposed employment legislation

Plans for changes to industrial relations law and to other aspects of employment law have been announced.

The Industrial Relations (Amendment) Bill 2015 proposes to:

- Re-introduce a mechanism for the registration of employment agreements between employers and unions and provide for a statutory framework for establishing minimum rates of pay and terms of conditions of employment for particular workers
- Change the current law on the right of employees to engage in collective bargaining

The Bill has not yet been discussed by the Oireachtas.

Registered employment agreements

Registered employment agreements (REAs) were agreements made between employers and employees in a particular industry which were registered by the Labour Court and then became mandatory for all employers in that industry. They were effectively rendered invalid by the Supreme Court in 2013 in *McGowan and others v the Labour Court*. Link: <http://www.courts.ie/Judgments.nsf/0/EDA96814B311375E80257B660047846D>

Put simply, the main reason was that the Constitution requires that laws be made by the Oireachtas and this arrangement effectively meant that laws were being made by the Labour Court. There were six REAs in existence before 2013.

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The Bill proposes to re-introduce a means of registering employment agreements. The essential difference is that these new agreements will be binding only on the parties who agree them and will not be binding on others within the sector.

The Bill also provides for a new statutory arrangement for establishing minimum rates of pay and conditions of employment for specific types or groups of employees. The proposal is that the Labour Court could start a review of pay, sick pay and pension entitlements of workers in a particular sector. If it considers it appropriate, the Labour Court could make a recommendation to the Minister. The Minister could then make an order – a Sectoral Employment Order – which would be legally binding on the sector and enforceable by the WRC.

Law on collective bargaining

The aim of the proposed legislation is to provide a mechanism for workers who want to improve their terms and conditions in workplaces where collective bargaining is not recognised by the employer. When passed, it will mean that such workers and their trade unions will be able to bring claims to the Labour Court for improved pay and conditions and have these claims determined by the Labour Court based on comparisons with similar workplaces. If the Labour Court determination is not implemented, an order for its implementation may be got from the Circuit Court.

If an employer refuses to engage in bargaining with a trade union but does agree to bargain with an excepted body (a representative body of employees), the Bill proposes that the excepted body must meet certain standards of independence.

National Minimum Wage (Low Pay Commission) Bill 2015

This Bill proposes to put the Low Pay Commission (LPC) on a statutory basis. It has not yet been discussed by the Oireachtas. The LPC has already been established on an administrative basis and has started its work. The role of the LPC is to recommend annually to government the appropriate rate of the National Minimum Wage. It may also examine other issues related to the National Minimum Wage if the Cabinet agrees this.

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