

Employment eAlert

Reorganising your business? You need to comply with recent legislation – otherwise you risk wasting savings achieved paying large fines and compensation.

Exceptional collective redundancies

A dynamic piece of legislation governing collective redundancies - that came into force on 8 May 2007 - has potentially far reaching consequences for employers. Failure to abide by it may result in you paying up to five years' compensation and / or fines of up to €250,000.

The Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 (the Act) was introduced, in part, to prevent the so-called 'Irish Ferries on land' scenario and seeks to prevent large scale compulsory replacement of workers in Ireland by lower paid workers.

The Act also makes a number of amendments to existing redundancy law.

What constitutes an exceptional collective redundancy?

An exceptional collective redundancy is a dismissal which is collective and compulsory, and one which takes place in circumstances where the dismissed employees are replaced by others who will perform essentially the same functions as those dismissed, but on terms and conditions of employment materially inferior to those who have been dismissed.

Don't take too much comfort from the phrase 'collective redundancy' as a 'collective' redundancy can arise in a situation where as few as **five** employees (in an organisation employing more than 20 employees) are being made redundant.

Main features of the Act

- **Redundancy panel**

The Act provides for the establishment of a redundancy panel (the panel) to whom certain proposed collective redundancies can be referred to for consideration. If the panel decides that the proposed redundancies constitute exceptional collective redundancies, it may request the Minister for Enterprise, Trade and Employment to refer the matter to the Labour Court. The Labour Court must then hold a hearing in to the matter and may issue an opinion to the Minister within 16 days. The Minister must then notify the affected parties of the Labour Court's opinion within a further period of seven days. No appeal lies from the Labour Court.

- **Removal of upper age limit for redundancy payments**

The Act also removes the previous upper age limit (66) for entitlement to statutory redundancy payments – regardless of whether the redundancy is individual or collective. Accordingly, all employees over the age of 66 will now be entitled to receive a statutory redundancy payment if they fulfill the requisite criteria.

- **Obligation to consult employee representatives – new time limit**

A most important development (and one which affects all collective redundancies) is the requirement to consult with employee representatives at least 30 days before the first notice of dismissal is **servd**. Prior to the introduction of the Act, consultation was only required at least 30 days before the first dismissal **took effect**.

- **Notification to the Minister**

The employer is obliged to notify the Minister for Enterprise, Trade and Employment of the proposed redundancies at the earliest opportunity but at least 30 days before the first dismissal takes effect. The Act provides that if the redundancies are effected by an employer before the expiry of this 30 day period, the employer may well be liable to a fine of up to **€250,000**.

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- **Increase in compensation for unfair dismissal – up to five years remuneration**

An employee who has been unfairly dismissed in an exceptional collective redundancy situation may be entitled to compensation of up to a maximum of five years' gross remuneration. In a collective redundancy situation it is readily apparent that this could prove extremely costly for an employer.

- **Loss of tax rebate**

If the Labour Court determines that the proposed dismissals are exceptional collective redundancies the Minister is entitled to refuse the employer's application for a 60% rebate on statutory redundancy payments. (In the Irish Ferries' case the government's decision to pay the €4.3 million rebate proved controversial).

For more information please contact Aoife Bradley, Gillian Dully or Jennifer O'Neill of our [Employment, Pensions and Employee Benefits Unit](#).



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