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Changing the Face of Irish Employment Law - The Workplace Relations Act 2015

by **Ciara O'Kennedy**

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The Workplace Relations Act 2015 (the Act) which came into effect on 1 October 2015 is intended to dramatically reform the employment law landscape in Ireland. The intended aim of the Act is to deliver a world class workplace relations service which is simple to use, independent, impartial and cost effective.

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The Act, a game changer for every employer and worker in Ireland, is intended to simplify the complex employment dispute system under Irish law. This essentially involved five different employment bodies: the Labour Relations Commission, the Rights Commissioner Service, the Employment Appeals Tribunal (the EAT), the Equality Tribunal and the National Employment Rights Authority. This regularly gave rise to a multiplicity of claims involving the same parties appearing before a number of different statutory bodies, a system which was, for both employers and employees alike, frustrating, time consuming and costly. The new system creates a single point of entry for all employment disputes and establishes a single umbrella body, the Workplace Relations Commission (WRC), to deal with all of these disputes. All employment claims made after 1 October will be dealt with under the new system and referred for adjudication to the WRC and on appeal to the Labour Court. This new two-tiered streamlined system, which essentially consolidates five statutory employment bodies into two bodies, should make it less complicated for employees to bring claims and for employers to respond to or defend such claims. Employees with multiple complaints no longer have to lodge their complaints with five separate bodies and instead must simply lodge one complaint form specifying all claims being made and these will then be dealt with in the one place at the one time.

It is also intended that the new system will place greater emphasis on early and informal resolution of employment disputes. Only where the parties refuse to participate in early resolution (through the appointment of either a case resolution officer or a mediation officer), or where early resolution is deemed inappropriate or unsuccessful, will the dispute be referred to an adjudication officer of the WRC for a decision. A marked departure from the current system is that regardless of the nature of the claim, one single adjudication officer will hear the claim in private and while the adjudication officer is empowered to subpoena witnesses to attend, evidence will not be required to be provided on oath. The Act also permits proceeding by way of written submissions in certain limited circumstances. The WRC may publish the decisions of an adjudication officer online but the names of the parties will remain anonymous, again in stark contrast to the current system where unfair dismissal hearings are held in public, decisions are publicly available online and are regularly reported upon by the media. This new departure may prove beneficial for employers who wish to keep company disputes private but many commentators are very critical of this move which is arguably in breach of an employee's constitutional right and rights protected by the European Convention on Human Rights which entitles individuals to a fair and public hearing. Appeals will however be held in public, unless on application by one party to the appeal, the Labour Court is satisfied that special circumstances exist requiring the matter to be heard in private.

Limitation periods for pursuing employment claims have been harmonised to six months from the date of the

alleged contravention which is a welcome development. This can be extended up to 12 months where "reasonable cause" can be shown.

Introducing simpler and more cost effective methods of enforcing awards must also be commended. Employees can now apply to the District Court, rather than the Circuit Court, for an order directing an employer to implement a decision in accordance with its terms if it has failed to do so within 56 days of the decision being made. A guilty employer may face a fine or imprisonment.

Employers should also be aware that the Act goes far beyond simply reforming processes and procedures for dealing with employment claims. Stricter compliance measures have been introduced providing for the appointment of inspectors who are empowered to penalise employers for breaches of employment law. Employers can be hit with "on the spot fines" of up to €2,000.00 with the possibility of imprisonment for breaches of certain specified offences, such as the failure to provide a pay slip. Inspectors can also serve compliance notices directing employers to do or refrain from doing certain things, with fines of up to €50,000.00 and/or imprisonment of up to three years for failure to comply. A compliance notice can be appealed to the Labour Court within 42 days of receipt. Inspectors will also have the power to enter any place of work, by use of reasonable force if necessary, to carry out an inspection and to take copies of or remove any books, records or documents found during the course of the inspection if the inspector feels it necessary to do so.

A further notable inclusion in this Act which employers ought to be aware of is a provision allowing for increased sharing of information between various state agencies on employers found to be acting in beach of employment law – it is anticipated that this may result in employers being excluded from certain public tenders or payments being withheld by a public body pending compliance.

While the Act introduces much needed and relatively radical reform to an outdated system for resolving workplace disputes in Ireland, numerous shortcomings have also been identified, not least in the adjudication process itself and the failure to require some form of legal training for adjudication officers and it remains to be seen if this Act will achieve this much needed reform.

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