



EMPLOYMENT, PENSIONS AND EMPLOYEE BENEFITS

LK Shields | Employment Law Legislative Update 1 February 2018 – 19 April 2018

by **Aoife Bradley**

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Summary of legislative developments

In this edition of our regular update on legislative developments in employment law, we discuss a number of proposals for new legislation, including Private Members' Bills, on subjects as diverse as the impact of extreme weather on employees to the protection of maternity leave for members of both houses of the Oireachtas. This edition also covers two Private Members' Bills on bogus self-employment, namely 1. the Protection of Employment (Measures to Counter False Self-Employment) Bill 2018 and 2. the Prohibition of Bogus Self-Employment Bill 2018.

Our update also covers a range of new statutory instruments including regulations providing for compulsory retirement conditions for the Garda Commissioner, regulations providing for the licensing of security services for monitoring alarms or CCTV systems and two recent orders impacting on the records certain undertakings are required to keep in relation to their employees.

We also briefly discuss the Employment Permits (Amendment) Regulations 2018, which include important changes to the employment permits system and which we discuss in greater detail, along with several other key developments in the area of employment permits in Jennifer O'Neill's recent article, "Irish Immigration Law: A Review of Recent Developments" which you can access [here](#).

We look forward to hearing any comments or questions you may have in relation to the contents of this update.

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ACTS

Public Service Superannuation (Amendment) Act 2018

This Act amends section 4 of the Public Service Superannuation (Miscellaneous Provisions) Act 2004, which provides for the compulsory retirement age for new entrants to the Garda Síochána.

The 2018 Act amends section 4 of the 2004 Act to make provision for the appointment of a person who has attained the age of 55 years but is under the age of 60 years as a new entrant to the Garda Síochána to the rank of Commissioner or Deputy Commissioner.

In the case of an appointment of a person over the age of 55 but under the age of 60 to the position of Deputy Commissioner, the appointment is subject to the Commissioner being satisfied that he or she is fully competent and available to undertake, and fully capable of undertaking, the duties of his or her position.

Where appointment is made to the position of Deputy Commissioner, the Commissioner shall require, at intervals the Commissioner considers appropriate, certification as to the health and fitness of that person by a medical practitioner nominated by the Commissioner.

In the case of an appointment of such a person to the position of Commissioner, the person will be subjected to the same requirements by the Minister for Justice and Equality.

This Act came into force on 7 March 2018 (see commencement Order below).

Technological Universities Act 2018

This Act provides for the establishment of technological universities by means of the dissolution and consolidation of existing institutes of technology.

Members of staff of dissolved institutes of technology will automatically become members of staff of the newly created technical university subject to terms and conditions of service, including terms and conditions relating to remuneration, that are not less favourable to those which they enjoyed as members of staff of the institute of technology. This is subject to any collective agreement negotiated with a recognised trade union or staff association that may be in place.

Staff who are members of the Single Public Service Pension scheme will continue to be members of the scheme. Provision is made however for the variation of the terms and conditions of various Education Superannuation Schemes of which transferred staff may be members.

Previous service with an institute of technology will be reckonable for the purposes of various employment statutes.

BILLS

Arts (Dignity at Work) (Amendment) Bill 2018, Arts (Dignity at Work) (Amendment) (No. 2) Bill 2018

These Private Members' Bills are intended to enable the Arts Council to make the provision of funding contingent on compliance by recipients of such funding with employment law.

The Bills seek to amend the Arts Act 2003 by providing that all recipients of funding over €100,000 will be subject to a contract which stipulates that funding is contingent on ongoing compliance with specified employment legislation. Where the Workplace Relations Commission ('WRC') finds that funding recipients are in contravention of the specified employment legislation and the recipients do not act upon the recommendations of the WRC, such recipients will be held to be in breach of contract. In the event of such a breach of contract, the Arts Council will withdraw funds from the recipient in a manner and of a level which it deems appropriate.

Extreme Weather (Miscellaneous Provisions) Bill 2018

This Private Members' Bill seeks to amend the Safety, Health and Welfare at Work Act 2005 to provide for the safety of employees during certain severe weather warnings by Met Éireann.

The Bill provides that in the event of a Status Red severe weather warning, an employer with a place of work in the State or in the maritime area (as defined) that is subject to such a warning must, for the duration of the warning, close the place of work and make reasonable measures to inform all employees to stay away from the place of work for the duration of the warning.

Where an employee's place of work is in a number of locations, the employer must make reasonable measures to inform such employees to stay away for the purposes of his/her employer's work from any location to which the warning relates. Employers must also ensure that an employee who stays away from his/her place of work for the duration of a Status Red severe weather warning is not penalised for doing so.

Employees who would, but for the warning, have been at work must be treated by his/her employer as if he/she had been at work for whatever period of such a warning that he/she would otherwise have been at work.

The Bill also provides for the amendment of the Criminal Justice (Public Order) Act 1994 to make it an offence for a person, in a public place in respect of which there is a Status Red severe weather warning in operation, to act recklessly or without reasonable cause or excuse and engage in any activity that directly or indirectly presents a danger to his/her own life or the life of another, or that may interfere with the ability of any emergency service to perform its functions. A person found guilty of such an offence is liable on summary conviction to a fine of €1,000 or to imprisonment for a term of up to 6 months or both.

Protection of Employment (Measures to Counter False Self-Employment) Bill 2018

This Private Members' Bill provides for the independent determination of the employment status of an individual, and to provide protection to those who are engaged to carry out work and are incorrectly designated as independent contractors.

The Bill applies to the determination of employment status for the purposes not only of employment legislation but also tax and social welfare legislation.

The Bill provides that the question of an individual's employment status is a question of law which is to be determined objectively having regard to the true nature of the relationship, and sets out a list of factors to which regard should be had in reaching such a determination.

Further provision is made whereby the Revenue Commissioners may form the opinion that a particular arrangement which is calculated to misrepresent the nature of the relationship is a tax avoidance transaction.

Under the Bill, an individual may refer a dispute as to whether an employment relationship exists to the WRC. An adjudication officer, or the Labour Court on appeal, may declare that an employment relationship exists (or does not exist), require an employer to take a specified course of action, and require an employer to pay compensation to the employee of an amount not exceeding 2 years' remuneration.

Maternity Protection (Members of the Houses of the Oireachtas) Bill 2018

This Bill makes provision for maternity leave entitlements for female members of Dáil Éireann and Seanad Éireann. It provides that such members will be entitled to 18 consecutive weeks' maternity leave, or 18 weeks, all or part of which is postponed due to the hospitalisation of the child. Relevant members will also be entitled to 8 weeks' additional maternity leave commencing immediately after the end of their maternity leave, or 8 weeks, all or part of which is postponed due to the hospitalisation of the child. A member of the Oireachtas who is on maternity leave or additional maternity leave will be entitled to receive full pay, but will not be paid for expenses claims in respect of her work as a member of the Oireachtas unless such expenses are lawfully accrued during her maternity leave or additional maternity leave.

Prohibition of Bogus Self-Employment Bill 2018

This Private Members' Bill is intended to prohibit employers from entering into what are termed 'bogus' contracts for services, and for the referral of complaints in this regard to the WRC.

The Bill defines a bogus contract for services as one which exists where, "notwithstanding that the parties or one or other of them purports to confer some other description to the engagement, in truth a contract of employment subsists between the parties". The Bill sets out 19 grounds to which regard may be had when determining whether such a contract exists, including the following:

- the degree of autonomy the person performing the work has over the tasks,
- the degree of supervision over the person performing the tasks,
- the degree to which the person performing the tasks is integrated with others in the workplace in question,
- whether the person supplies his/her own tools, equipment or other items,
- any previous contract of employment between the parties,
- the economic dependency of the person performing the work on the relation in question,
- the relative strength of the bargaining positions of the parties, and
- any other relevant matters.

The Bill prohibits an employer from:

- dismissing or threatening to dismiss an employee who has a contract of employment and performs particular work for the employer, in order to engage the employee to perform the same, or substantially the same, work under a contract for services. Such a dismissal would be deemed to be an unfair dismissal,
- representing to a person whom they employ or propose to employ that the contract of employment is a contract for services, and
- making a statement that they know, or ought reasonably to know, is false in order to persuade or influence a person whom they employ or have employed, to enter into a contract for services under which the person carries out the same, or substantially the same, work or provide the same, or substantially the same, services for the employer.

The Bill also provides for redress for workers who have been party to a bogus contract for services. Such workers are entitled to redress as granted by an adjudication officer of the WRC or by the Labour Court, including the following:

- a declaration that a contravention has occurred and a direction that a person cease such contravention,
- re-instatement,
- re-engagement,
- a direction to the employer to pay all contributions under the Social Welfare Consolidation Act 2005, which would have been payable by the employer had the worker had a contract of employment,
- a direction to the employer to pay all payments, taxes, charges and penalties under the Tax Acts due by the worker resulting from or arising out of any period of the bogus contract for services concerned including any failure by the worker to pay such amounts, and
- payment to the employee by the employer of any financial loss incurred by the employee or, where

no such loss was incurred, such compensation as is just and equitable in all of the circumstances.

The Bill was introduced in the Dáil on 8 March 2018 and has been referred to Second Stage.

STATUTORY INSTRUMENTS

Garda Síochána Act 2005 (Retirement) Regulations 2018 (SI No 28/2018)

These regulations revoke the Garda Síochána (Retirement) Regulations 1990 (SI No 318 of 1990) and mandate that an individual appointed to the rank of Garda Commissioner must retire upon reaching the age of 60 years or upon completion of 5 years' service in that rank whichever is the earlier.

Occupational Pension Schemes (Revaluation) Regulations 2018 (SI No 35/2018)

These regulations provide that there shall be a 0.4% revaluation of any preserved benefits under a defined benefit scheme for the year 2017 under section 33 of the Pensions Act 1990. The appropriate amount must be added to the amount of preserved benefit as of the last day of the previous revaluation year (2014).

Private Security (Licensing and Training) (Security Guard (Monitoring Centre) Regulations 2018 (SI No 54/2018)

These regulations provide that as of 1 June 2018 individuals who are employed as a security guard to monitor security equipment which consist of a continuously manned remote centre to which information concerning the status of one or more alarm or CCTV system is reported may apply to the Private Security Authority for a license to perform these duties. They also provide for training to be completed by an applicant for a licence.

Private Security Services Act 2004 (Commencement) Order 2018 (SI No 56/2018)

This order provides that as of 1 June 2018 a security guard who monitors security equipment which consist of a continuously manned remote centre to which information concerning the status of one or more alarm or CCTV systems is reported shall not provide such a security service or hold himself or herself out as providing such a security service or represent himself or herself by advertisement, displaying any shield, card or other object purporting to indicate that he or she is a licensee or otherwise are available to provide such a service unless the individual is the holder of a license under the Private Security Services Act 2004 authorising him or her to provide that service. This will equally apply to a body corporate and an unincorporated body as it does to an individual. A contravention of this order will be an offence punishable on summary conviction by a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both or, upon conviction by indictment, an unlimited fine or a term of imprisonment not exceeding 5 years or both.

Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018 (SI No 59/2018)

This order applies in respect of the employment of qualified plumbers and registered apprentice plumbers aged 15 years or more who have entered into or work under a contract with an employer, whether the contract be for manual labour, clerical work or otherwise and whether they have a written contract or not or whether they are an employee or an independent contractor. This order provides statutory minimum rates of remuneration and other conditions of employment, such as minimum hourly rates, premium rates for hours worked outside the normal working week, pension scheme entitlement, sick pay scheme entitlement, dispute resolution procedure and other benefits.

Public Service Superannuation (Amendment) Act 2018 (Commencement) Order 2018 (SI No 67/2018)

This order brings the Public Service Superannuation (Amendment) Act 2018 into force as of 7 March 2018. For further details regarding this Act see above.

Employment Permits (Amendment) Regulations 2018 (SI No 70/2018)

These regulations amend the Employment Permits Regulations 2017 to provide for, amongst other things, additional documentary requirements in respect of granting of new or renewal applications for employment permits, a maximum number of general employment permits that may be granted in respect of certain chef

grades, changes to the list of employments in which there is a shortage in respect of qualifications, experiences or skills and changes to the list of employments in respect of which an employment permit shall not be granted.

Inland Fisheries Ireland Superannuation Scheme 2018 (SI No 112/2018)

These regulations establish a superannuation scheme for members of staff of Inland Fisheries Ireland who are not members of the Single Public Service Pension Scheme. The rules as set out in the schedule to the Rules for Pre-existing Public Service Pension Scheme Members Regulations (SI No 582/2014) are adapted for this purpose.

Choice of Court (Hague Convention) Act 2015 (Section 2) Order 2018 (SI No 113/2018)

This order states that the European Union will not apply the Choice of Court (Hague Convention) Act 2015 to insurance contracts, except as specified. The order lists the contracting states to the Convention including Ireland and states that the Convention will apply to the following insurance contracts: reinsurance contracts, choice of court contracts made after a dispute has arisen, where the insurance agreement is concluded between a policy holder and insurance company both domiciled in the same contracting state and the agreement confers jurisdiction on that contracting state notwithstanding whether the harmful event were to occur abroad, where the subject matter of the insurance agreement covers a “large risk”, which relates to large commercial purposes, such as shipping, aircraft, railway rolling stock, or where policy holder carries on a business which exceeds two of the following: a balance sheet of €6.2 million, a net turnover of €12.8 million or 250 employees during a financial year.

Statistics (Labour Costs Survey) Order 2018 (SI No 115/2018)

The Taoiseach enjoys the power to require certain persons and undertakings to provide information under the Statistics Act 1993.

The purpose of this Order is to require certain undertakings to provide information for the purposes of the Labour Costs Survey conducted by the Central Statistics Office.

This Order applies to any undertaking that is classified for statistical purposes under Regulation (EC) No 1893/2006, which establishes a common statistical classification of economic activities in the EU (known as NACE Rev. 2). Certain categories of undertakings sectors are however excluded from the scope of this Order – in particular undertakings in the agriculture, forestry, and fishing sectors.

Undertakings to which this Order applies are required to provide certain information on a quarterly basis for the period commencing 10 April 2018 and ending on 31 March 2023.

The information to be provided includes the following:

- the number of full-time employees, part-time employee, apprentices and trainees who are employed or hired;
- the number of job vacancies;
- the total costs of wages, salaries and other forms of compensation and benefits;
- the total paid hours, and hours not worked;
- the costs of pension contributions made;
- the total costs of social security contributions incurred;
- training costs incurred;
- other costs and expenses incurred by reason of the employment or use of labour;
- the total amount received of subsidies/refunds in respect of the costs of remuneration;
- the number of employees who were paid an hourly rate of pay equal to the national minimum hourly rate of pay.

This information is to be classified with reference to the following occupational categories (a) managers, professionals and associate professionals, (b) clerical, sales and service workers, and (c) production, plant and transport workers, craft and tradespersons and other manual workers.

Miscellaneous

Notice issued under Trade Union Acts 1871 – 1990

The Registrar of Friendly Societies has given notice of her intention to cancel the registration of the Public Service Executive Union, the Civil Service and Public Services Union, and the Irish Municipal Public and Civil Trade Union, effective 31 May 2018.

This notice has been issued by the Registrar under the Trade Union Act 1876 in circumstances where these trade unions have ceased to exist following their amalgamation into the new trade union Fórsa on 2 January 2018.

The content of this publication does not constitute legal or other professional advice and is not intended to be relied upon as such.

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