

EU Labour Law

Inside this issue:

Recruitment	1
Terms and conditions of employment	1
Status of Relationship	2
Industrial Relations	3
Transfer Regulations	4
Termination of employment relationship	4
Useful contacts	5

The Dublin Chamber of Commerce held a European and Irish Employment legislation seminar kindly sponsored by Hayes Solicitors.



Incorporating Fawsitt Solicitors
& Eugene Davy Solicitors

This guide aims to provide owners and managers with an overview of the current and ever-increasing amount of Employment legislation.

Note that EU legislation in this field sets up **minimum requirements at EU level**. The Member States then have to transpose it into their national law and implement it.

Recruitment

Equality and non-discrimination

Under Directive 2000/78 EC transposed in Ireland by the Employment Equality Acts 1998-2007 discrimination in employment on any one of the following nine grounds is outlawed:

- Age
- Gender
- Marital status
- Family status
- Disability
- Race
- Sexual orientation
- Religious belief
- Membership of the Travelling Community

These Acts **cover all stages of the recruitment process** from the wording of the job advertisement, the selection criteria, conduct of the interview, through to the final selection decision.

Job ads

The publication or display of an ad which indicates an intention to discriminate, or might reasonably be understood as indicating such an intention is prohibited.

Example: The Equality Tribunal found that an airline company discriminated on grounds of age in relation to the wording of a job advertisement for the post of Director of Regulatory Affairs. The advertisement stated: "the ideal candidate will be young and dynamic".

Terms and conditions of employment

Under Directive 91/533/EEC implemented in Ireland by the Terms of Employment (Information) Act, 1994 employers have to provide their employees with a **written statement of terms and conditions** relating to their employment within two months of commencing employment.

It must include the following information:

- The full names of the employer and the employee
- The address of the employer
- The place of work
- Job title or nature of the work
- Date of commencement of employment
- In the case of a temporary contract or a fixed-term contract, its expected duration
- Basic amount, and other components of remuneration and frequency of payment;
- Employee's normal working hours and any overtime;
- Terms or conditions relating to paid leave (other than paid sick leave)
- Terms or conditions relating to incapacity for work due to sickness or injury
- Terms or conditions relating to pensions and pension schemes
- Periods of notice or method for determining periods of notice
- Any relevant collective agreements
- Be signed and dated by employer

Any change to the terms of the contract or employment relationship must be recorded in writing within one month of the change.

Leave entitlements

• Paid annual leave

Under [Directive 93/104/EC](#) implemented in Ireland by the [Organisation of Working Time Act 1997](#) employers must provide their full-time employees with a basic annual paid leave of **four weeks**.

For further information on paid annual leave, please click [here](#).

• Sick Leave

In general it is at the discretion of the employer to decide his/her own policy on sick pay and sick leave - an employee has no right under employment law in Ireland to be paid by an employer while on sick leave.

However under a [ECJ ruling](#), staff who are off work due to long-term sickness are entitled to paid holidays.

• Maternity Rights

All female employees in Ireland are entitled to 26 weeks' maternity leave irrespective of how long they have worked for their employer and an optional 16 weeks additional maternity leave.

Entitlement to pay from an employer during maternity leave depends on the terms of the contract of employment.

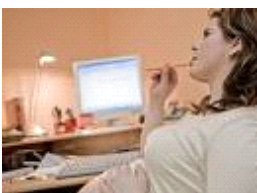
Under [Directive 92/85/EEC](#) pregnant workers may under no circumstances be obliged to perform duties for which assessment has revealed a risk of exposure to some [specific agents](#). Female workers are not obliged to perform night work during their pregnancy and for a period following childbirth.

• Parental Leave

[Directive 96/34/EEC](#) lays down equal rights for men and women to unpaid parental leave on the grounds of birth or adoption of each child. This parental leave can last up to three months. It also provides rules for protection against dismissal if parental leave is taken as well as for a right to return to the same or a similar job.

Under Irish law, Parental leave is available for each child up to 8 years and amounts to a total of 14 weeks per child.

For further information, please click [here](#).



Health and Safety

Health and Safety at work represents today one of the most important advanced fields of the social policy of the EU. It includes physical issues, traditional workplace diseases and injuries and psycho-social topics such as stress.

Employer has a duty to ensure the employees' safety, health and welfare at work as far as is reasonably practicable. The employer is required, among other things, to:

- Provide and maintain a safe workplace
- Prevent risks from use of any article or substance and from exposure to physical agents, noise and vibration
- Prevent any improper conduct or behaviour likely to put the safety, health and welfare of employees at risk
- Provide instruction and training to employees on health and safety
- Provide protective clothing and equipment to employees
- Appointing a competent person as the organisation's Safety Officer

Employers are also required to carry out a risk assessment for the workplace. This document should identify any hazards present in this place, assess the risks arising from such hazards and identify the steps to be taken to deal with any risks. The employer must also prepare a safety statement based on the risk assessment which should be made available to employees.

For further information on this topic please click [here](#).

[EU directive \(91/383/EEC\)](#) ensures that **fixed-term** and **temporary agency workers** have the same level of safety and health protection at work as other employees.

It also provides for a duty on undertakings to give adequate information and training to these particular workers before they take up their duties.

For further information on fixed-term and temporary workers' rights please click [here](#).

Working Time Directive

Under this [Directive 2003/88/EC](#) every worker is entitled to:

- A limit to weekly working time including overtime which must not exceed 48 hours on average
- A minimum daily rest period, of 11 consecutive hours in every 24
- A rest break during working time, if the worker is on duty for longer than six hours
- A minimum rest period of one day a week
- A minimum weekly rest period of 24 uninterrupted hours for each seven-day period
- A paid annual leave, of at least four weeks per year



There are separate [directives](#) on working time for certain workers in specific transport sectors.

Equal treatment of men and women in the workplace

Equality between men and women in the workplace is guaranteed by several directives.

Under [Directive 75/117/EC](#) an employer is not allowed to pay persons doing the same work or work of equal value differently due to their sex.

[Directive 76/207/EC](#) ensures equal access to all employments, promotion and vocational guidance and training and equal working conditions, including dismissal. Under this legislation a woman cannot be dismissed on grounds of pregnancy or maternity.

These Directives are executed in Ireland by the [Employment Equality Act 1998-2007](#).

Under [Directive 79/7/EEC](#) no discrimination on the ground of sex by reference in particular to family or marital status, may occur concerning the conditions of access to Social Security schemes.

=> Please note that in some industries employees are entitled to additional rights. To see if the sector you work in is covered by these please click [here](#).

Status of relationship

Fixed-term / Part-time

• Fixed-term work

Directive 1999/70/EC forbids employers to treat fixed-term workers less favourably than permanent workers and prevents abuse of successive fixed-term contracts.

In Ireland this Directive is implemented by the Protection of employees (Fixed-term work) Act 2003 which obliges employers to provide objective reasons that justify the renewal of fixed-term contracts.

As far as practicable, employers must provide fixed-term workers with access to appropriate training opportunities. Fixed-term workers must also be taken into consideration when calculating the threshold above which workers' representative bodies may be constituted.

• Part-time work

The Framework Agreement requires that part-time workers shall not be treated in a less favourable manner than comparable full-time workers, unless there are objective reasons for different treatment.

As far as possible employers should take account of employees' preferences their requests to transfer from full-time to part-time employment or vice versa.

A worker's refusal to transfer from full-time to part-time work or vice versa should not in itself be a valid reason for dismissal.

Agency workers

The Directive 2008/104/EC lays down the principle of non-discrimination, regarding the essential conditions of work and of employment, between temporary workers and workers who are recruited by the user company.

The user company should keep temporary workers informed of any permanent vacancies. Temporary workers should also have equal access to amenities and collective services at work.

Posted workers

A posted worker is a worker employed in one EU Member State but sent by his employer on a temporary basis to carry out his work in another Member State.

For example, a service provider may win a contract in another country and send his employees there to carry out the contract for up to two years.

An employer must **respect the minimum terms and conditions of employment of the country where his/her employee is posted**. This cover a wide range of issues such as maximum work periods or minimum rates of pay. Workers posted to work in Ireland from other EU Member States have the protection of all Irish employment legislation in the same way as employees who have an Irish contract of employment.

For further information please click [here](#).

Industrial relations

• Right of employee to join Trade Union

Under Article 40.6.1.iii of the Irish Constitution employees have a constitutional right to join Trade Unions. This right is also recognised under the Community Charter of the Social Rights of Workers.

• Employee involvement

Directive 2002/14/EC establishes a general framework for informing and consulting employees in organisations.

Under this legislation information and consultation are required on:

- The recent and probable development of the organisations' activities and economic situation
- The situation of employment and any probable developments within the organisation and any anticipatory measures envisaged, in particular where there is a threat to employment
- Decisions likely to lead to substantial changes in the work organisation or contractual relations

Note that the information has to be given at such a time, in such a fashion and with such content as is appropriate to enable employees' representatives to carry out an adequate study and, where necessary, prepare for consultation. Consultation has to be organised at the relevant level of management and representation, and in such a way that enables employees' representatives to meet the employer and obtain a response, and the reasons for a response with a view to reaching agreements on decisions.

=> To avoid undue burdens on SMEs the Directive **applies only to undertakings employing at least 50 employees**.

• Collective redundancies

Collective redundancies are decisions by employers to lay off a group of employees.

In Ireland, collective redundancies arise where, during **any period of 30 consecutive days**, the employees being made redundant are:

- 5 employees where 21-49 are employed
- 10 employees where 50-99 are employed
- 10% of the employees where 100-299 are employed
- 30 employees where 300 or more are employed

In such situation an employer is obliged to initiate **consultation with employees' representatives** at the earliest opportunity and at least 30 days before the notice of redundancy is given. The aim of the consultation is to consider whether there are any alternatives to the redundancies, to mitigate the redundancies and the basis on which employees will be made redundant.

To ensure that the consultations are effective, employers must provide their workers' representatives with the following written information:

- The reasons for the redundancy
- The number and descriptions of the employees affected
- The number of employees normally employed
- The period in which the redundancies will happen
- **The criteria for selection of employees for redundancy**
- **The method of calculating any redundancy payment.**

Employers are also obliged to inform the Minister for Enterprise, Trade and Employment in writing of the proposed redundancies at least 30 days before the occurrence of the first redundancy. There are penalties for failure to comply with these provisions.

For further information on Directive 98/59/EC and its implementation in Ireland please click [here](#).

Transfer Regulations

Rights and obligations under the employment contract pass from the previous employer to the new one. Collective agreements continue to apply until they expire or are terminated or replaced.

However that continued observation of rights does not apply to pensions.

Representatives must be consulted in good time on any measures envisaged in relation to employees as a result of the transfer before these are carried out. Moreover, representatives and, in certain cases, employees themselves must be informed about the date, reasons and implications of the transfer as well as the measures envisaged in relation to the employees.

The fact that a business or part of it is taken over by another employer does not in itself constitute valid grounds for dismissals. Nevertheless they are permissible if they are for economic, technical or organisational reasons.

For further information on the [EU legislation \(Directive 2001/23/EC\)](#) and its implementation in Ireland please click [here](#).

Termination of employment relationship

• Lay-offs, short-term and redundancy

Redundancy arises where an employee's job ceases to exist and he/ she is not replaced for such reasons as the financial position of the firm, because there is not enough work, the firm closes down altogether, or because of reorganisation.

A **lay-off situation** occurs where an employer is unable to provide work for an employee but believes this to be a temporary situation and gives him/her notification of the lay off before the work finishes.

Where an employer fails to give notice of lay-off, she/he leaves her/himself open to claims for statutory redundancy payments.

A **short-time situation** exists where, there is a reduction in the amount of work available, leading to a reduction in weekly pay or working hours to less than half the normal weekly amount.

Employers must give notice that the short-time is of a temporary nature, with failure to do so leaving them open to claims for redundancy payment.

• Redundancy procedure

In selecting a particular employee for redundancy, employers should apply selection criteria that are reasonable and are applied in a fair manner.

Selection criteria

The selection criteria should be reasonable and applied in a fair manner.

Under the [Unfair Dismissal Acts 1977 to 2007](#) and the Employment Equality legislation selection for redundancy is considered to be automatically unfair if based on any of the following grounds: employee's trade union activity, religious or political opinion, pregnancy, race or colour, age, membership of the travelling community, gender, sexual orientation, marital status, family status, or disability.

Alternative work

As with any dismissal employers must act reasonably when dismissing an employee in a redundancy situation.

The employer should also consider all options including alternative solutions. Any offer of alternative work should be given to your employees in writing.

Note that the employees made redundant are entitled to any holidays that are outstanding or payment in lieu.



• Minimum notice

The [Minimum Notice and Terms of Employment Acts 1973 to 2001](#) provide that employees in continuous service with the same employer for at least 13 weeks are entitled to a minimum period of notice (from one to eight weeks) before the employer may dismiss them*.

Employers are also entitled to at least one week's notice of termination from employees who have been employed by them for 13 weeks or more.

* These acts do not affect your right to terminate a contract of employment without notice due to the misconduct of the other party.

• Fair grounds for dismissal

The [Unfair Dismissals Acts 1977 to 2001](#) provide that every dismissal will be presumed to have been unfair unless the employer can show substantial grounds justifying it.

In order to justify dismissals employers:

- Must show that it was **connected with one or more of the 6 potentially fair grounds:**

- **Capability**, e.g. lateness, absenteeism, persistent absence, etc.
- **Competence**
- **Qualification**
- **Conduct (including Gross Misconduct):** Note that Gross misconduct may give rise to summary dismissal without notice or pay in lieu of notice.
- **Redundancy**
- **Contravening the law**, e.g. your employee needs a driving license to work but have lost it on a drunk driving charge.

or that there were other substantial grounds for dismissal.

- Must follow a **fair procedure** and give their employees appropriate warnings. I.e. employees have to be aware of the allegations against them and have the opportunity to present their side.

An employer who has dismissed an employee must, if asked, furnish in writing within 14 days the reason for the dismissal.

Useful Contacts

Hayes solicitors

Lavery House
Earlsfort Terrace
Dublin 2
Tel: 01 6624747
Email: law@hayes-solicitors.ie
Web: www.hayes-solicitors.ie

The Equality Authority

2 Clonmel Street
Dublin 2
Tel: 01 417 3333
Email: info@equality.ie
Web: www.equality.ie

National Employment Rights Authority

Government Buildings,
Line 2: O'Brien Road,
Co. Carlow
Tel: 059 917 8990
Email: info@employmentrights.ie
Web: www.employmentrights.ie

Health and Safety Authority

10 Hogan Place, Dublin 2.
Tel: 01 614 7000
Email: wcu@hsa.ie
Web: www.hsa.ie

Main sources

[National Employment Rights Authority](#)

[Department of Enterprise, Trade and Employment](#)

[European Commission - DG Employment, Social Affairs and Equal Opportunities](#)

The information contained in this document aims to give an overview of EU and Irish employment law. The fact sheet should be used as guidance only and it is recommended that professional legal advice is sought before any formal action concerning this employment legislation is made. No liability is accepted for any decision taken on foot of this document.

To subscribe/unsubscribe send an email to Marion@dublinchamber.ie. The Dublin Chamber of Commerce (Incorporated) is a company limited by guarantee, registered in Dublin, Ireland, Number 588

Contact:

Marion Jammet
Enterprise Europe Network Executive
Dublin Chamber of commerce
7 Clare Street, Dublin 2
Tel: 01/ 644 7200
www.een-ireland.ie