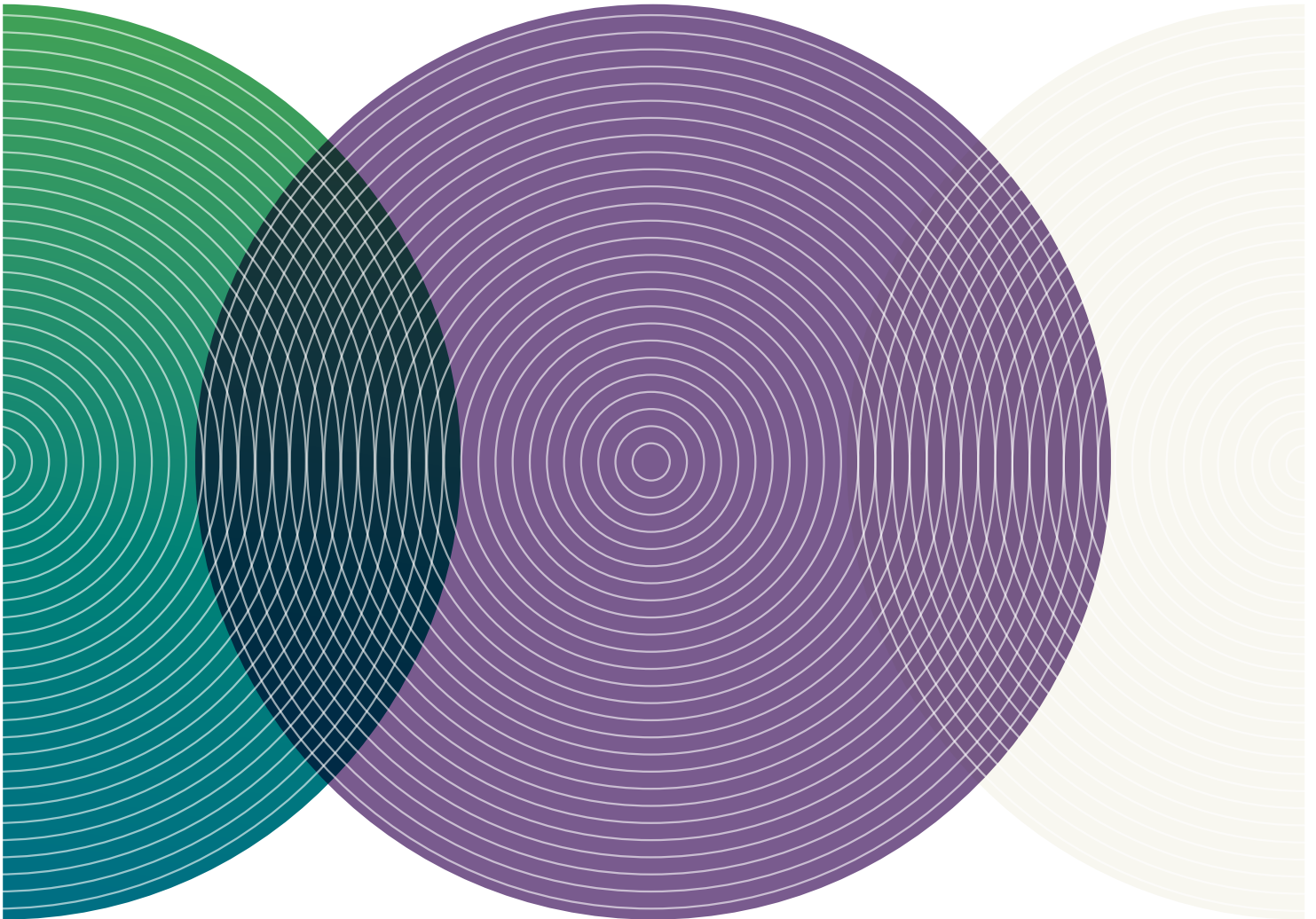

A Guide to
Employment Law
in Ireland

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Employment law in the Republic of Ireland is governed by common law, statutory provisions and a range of fundamental rights enshrined in the Irish Constitution. In addition, European Community legislation and decisions from the Court of Justice of the European Union apply to the employment relationship.

Following the commencement of the Workplace Relations Act 2015, the system of labour related Tribunals has been replaced by a new and simplified two-tier workplace relations structure for new claims comprising:

- a hearing before an Adjudication Officer of the Workplace Relations Commission which will deal with workplace complaints in the first instance; and
- an appeal before an expanded and reconfigured Labour Court.

Decisions of the Labour Court may be appealed on a point of law only to the High Court.

In addition, employees have access directly to the courts. The courts have, in a series of employment-related cases, granted injunctions restraining the purported termination of contracts of employment and also restraining internal disciplinary procedures on the basis that principles of constitutional and natural justice are not being observed. Such principles are further expanded by the European Convention on Human Rights Act 2003.

Categories of Employees

Irish employment law does not in general distinguish between different categories of employees.

Part-time employees are entitled to be treated no less favourably than full-time employees. Similarly, fixed-term employees are entitled to be treated no less favourably than permanent employees. Certain statutory protections do not apply to employees in the public sector.

The Protection of Employees (Temporary Agency Work) Act 2012 was enacted to give agency workers much the same rights and entitlements as permanent employees.

The Protected Disclosures Act 2014 introduces a new category of 'worker', which is a far broader concept, even including contractors.

Directors who are both office holders and employees have exactly the same entitlements as ordinary employees. Their additional rights and obligations as office holders are governed by the provisions of the Companies Act 2014 (as amended).

Employment and Immigration Law

RECRUITMENT

The Employment Equality Acts 1998 to 2015 (the “**Employment Equality Acts**”) specifically prohibit discrimination in the areas of access to, and conditions of, employment, training, promotion and advertising.

Employers are advised to review recruitment procedures, including advertising and interviewing techniques, to ensure that discrimination does not occur.

Employers are not required to use state unemployment offices and there are no recruitment quotas requiring employers to recruit from any particular groups (save for the issue of employment permits mentioned below). State employment offices and training centres are run by different bodies including the Department of Social Protection, Education & Technical Boards or Solas. They tend to provide formal sources of recruitment for manual or semi-skilled workers, but private recruitment consultants are commonly used for more senior positions.

The Department of Social Protection operates a grant-based incentive programme for employers, “JobsPlus”, in respect of eligible workers who have been unemployed for greater than 12 months.

EMPLOYMENT PERMITS

In general, an employment permit is required for non-EEA nationals who are working in the Republic of Ireland. An employment permit is issued by the Minister for Jobs, Enterprise and Innovation following an application by the employing company or the non-EEA national, in prescribed circumstances. A non-EEA national may not make an application unless an offer of employment has been made in writing to them.

Critical Skills Employment Permits (formerly known as Green Cards) are available for occupations with an annual salary of €60,000 or more and for certain occupations with an annual salary of between €30,000 and €59,999. Critical Skills Employment Permits are initially granted for a two year period.

General Employment Permits (formerly known as Work Permits) are available for occupations with an annual salary of €30,000 or more where Critical Skills Employment Permits are not available and, in exceptional circumstances, for occupations with salaries below €30,000. Certain jobs are strictly ineligible for General Employment Permits, regardless of the salary paid.

A Reactivation Employment Permit is available for those whose employment permit has expired in circumstances which are of no fault of their own, and Intra-Company Transfer Employment Permits are designed to facilitate the transfer of senior management, key personnel or foreign employees undergoing a training programme of a multinational corporation to its Irish branch.

The other permits available are the Contract for Service Employment Permits, Internship Employment Permits, Sport and Cultural Employment Permits, and Exchange Amendment Employment Permits.

When seeking to employ a non-EEA national, an employer must prove that, at the time of the application, more than 50 per cent of its employees were EEA citizens (including nationals of Switzerland).

ENTITLEMENT TO IRISH CITIZENSHIP: IRISH PASSPORTS

Individuals born outside the island of Ireland are entitled to Irish citizenship if either of their parents was an Irish citizen born on the island of Ireland. If these criteria are met the individual may apply for an Irish passport under Irish law, irrespective of where they reside. An application for Irish citizenship can also be made if a parent, while not born in the island of Ireland, was an Irish citizen at the time of the applicant's birth. In most cases applications of this type are made through a grandparent who was born in Ireland. An individual may also qualify for citizenship if one of their parents obtained Irish citizenship through Naturalisation or Foreign Birth Registration before they were born. In these cases, Irish citizenship can be passed on to the next generation as the parent was an Irish citizen at the time of the applicant's birth.

RESIDENCY

Applications for Long Term Residency in Ireland are currently processed as an administrative scheme. Persons who have been legally resident in the State for a minimum of five years (*ie* 60 months) on the basis of employment permits conditions may apply for a five year residency extension. Such persons may be exempt from employment permit requirements.

In the absence of an entitlement to Irish citizenship or a successful application for long term residency, non-EEA nationals must apply for an employment permit to work in Ireland.

Discrimination

The Employment Equality Acts prohibit discrimination on nine grounds, namely gender, civil status, family status, sexual orientation, religious belief, age, disability, race and membership of the Traveller community.

Discrimination on grounds of gender and marital status has been prohibited by statute since 1977 and the additional grounds were introduced in 1998.

The principle of equal treatment of men and women requires that they receive equal pay for “like work” unless the difference in pay is based on grounds unrelated to the employees’ gender. The Employment Equality Acts extend this principle to the new discriminatory grounds so that different rates of pay for like work must be justified on grounds other than these grounds.

Complaints concerning discrimination will be handled by an Adjudication Officer whose decisions may be appealed to the Labour Court

The Employment Equality Acts also protect employees from indirect discrimination, ie measures which may indirectly place individuals (within one of the nine discriminatory grounds) at a particular disadvantage by reference to a comparator.

The Employment Equality Acts outlaw sexual harassment in the workplace. Sexual harassment is defined as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature carried out by fellow employees, customers or business contacts, being conduct which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. Unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

The Employment Equality Acts also outlaw non-sexual harassment in the workplace. Harassment is defined as any form of unwanted conduct related to any of the nine discriminatory grounds carried out by fellow employees, customers or business contacts, being conduct which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. As with sexual harassment, unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Employers are liable for acts of sexual and non-sexual harassment by their employees unless they can establish that they took reasonable steps to ensure that harassment did not occur (such as having in place adequate policies and procedures). Complaints concerning discrimination will be handled by an Adjudication Officer whose decisions may be appealed to the Labour Court. Complainants may also refer claims directly to the Circuit Court in certain circumstances.

Contracts of Employment

FREEDOM OF CONTRACT

In Ireland there is extensive freedom of contract between employer and employee. However, employment legislation must be borne in mind. For example, although a contract of employment may allow an employer to terminate the contract on notice, the Unfair Dismissals Acts 1977 to 2015 provide that dismissals are deemed unfair unless the employer can show otherwise.

FORM

There is no requirement for a “contract of employment” per se to be issued. However, under the Terms of Employment (Information) Acts 1994 to 2012, at a minimum employers are obliged to furnish employees with a statement of the main terms and conditions of their employment within two months of commencement. The required information includes the place of work, the duration of any temporary or fixed-term contract, the rate or method of calculation of remuneration, the frequency of remuneration, any terms or conditions regarding hours of work including overtime, paid leave, incapacity to work due to sickness or injury, and paid sick leave. The statement should also specify the period of notice which the employee must give, and is entitled to receive, to terminate the employment.

Most employers will issue employees with a more detailed contract of employment, together with an employee handbook containing additional information on company policies and procedures (such as grievance procedure, disciplinary procedure and IT & social media usage policy).

Contracts may be for a fixed or indefinite term, or for a specific purpose, for example the completion of a project where it is not possible to predict the length of time required. Fixed-term or specified purpose contracts may be drafted to exclude an employee’s right to bring an unfair dismissal claim only on the expiry of the first fixed-term, or on the completion of the specified purpose. To avail of such an exclusion, the contract should be in writing, signed by both parties, and should state that the Unfair Dismissals Acts 1977 to 2015 shall not apply to a dismissal which is due only to the expiry of the fixed-term or the cessation of the specific purpose. However, a redundancy payment may still be due. Employers may not, however, use a series of fixed-term or specified purpose contracts to deprive employees of the protections available under the Unfair Dismissals Acts. Further limitations on the use of fixed-term contracts and further protections for fixed-term workers were introduced by the Protection of Employees (Fixed-Term) Work Act 2003.

TRIAL/PROBATION PERIODS

Trial periods of up to 12 months from the commencement of the employment may be agreed between the parties, although in practice trial periods may be much shorter. Although it is not a legal requirement that they be agreed in writing, in practice they are.

CONFIDENTIALITY AND NON-COMPETITION

All employees are under an implied duty not to enter into any business activities in competition with their employer, either during or outside working hours. In addition, restrictive covenants prohibiting employees from competing with the business of

their employer or from soliciting clients/customers, suppliers or former colleagues after termination of their employment are often included in the contracts of many senior employees. These will be enforced by a court only where they are reasonably required to protect the legitimate business interests of the employer and are limited in scope, time and geographical area. A duty of confidentiality in relation to certain aspects of the employer's business applies during the employment relationship and after it has terminated.

INTELLECTUAL PROPERTY

Contractual provisions concerning intellectual property rights and inventions made by employees are common. In the absence of an express provision, the courts will usually decide that an invention made by an employee during the course of employment belongs to the employer.

WHISTLEBLOWING

The Protected Disclosure Act 2014 is the first pan-sectoral whistleblower protection legislation in Ireland. It provides a robust statutory framework within which workers can raise concerns regarding potential wrong-doing in their workplace, and significant employment and other protections to prevent such worker suffering penalisation or detriment following their disclosure.

Pay and Benefits

BASIC PAY

The National Minimum Wage Acts 2000 and 2015 introduced a statutory minimum wage which is currently €9.15 per hour.

Certain industries have established minimum pay levels (which may be higher than the National Minimum Wage) and employers in such industries must give details of the pay level to employees. An employer who pays less than the established minimum may be ordered to pay up to three years' arrears of wages due to the employee. An employee may sue his or her employer if that employer fails to pay his or her basic salary.

Formerly, legally binding agreements known as Employment Regulation Orders ("EROs") relating to pay were reached by one or more trade unions and one or more employers through voluntary bodies known as Joint Industrial Councils, or through direct negotiation of a Registered Employment Agreement ("REA"). Such agreements applied to all individual employees covered by EROs or REAs regardless of whether or not those employees were union members. These forms of agreement were struck down as unconstitutional in 2013.

However, the Industrial Relations (Amendment) Act 2015 has re-introduced a framework for the registration of employment agreements between an employer or employers and trade unions governing terms and conditions in individual companies, alongside a framework for the establishment of orders setting minimum rates of remuneration and other terms and conditions for a specified type, class or group of workers ("Sectoral Employment Orders").

INDEX-LINKING

There is no obligation on employers to index-link the salary they pay to employees. National wage agreements based on a “partnership” approach between Government, unions, employers and other interested groups had been in place for many years in certain sectors, though the collapse of social partnership has seen these agreements fall away.

PRIVATE PENSIONS

Private pension schemes are becoming more common with contributions made to an independent fund by both employers and employees. However, these schemes tend to be defined contribution only, with new defined benefit (final salary) schemes being very rare. If a pension scheme is approved under the relevant legislation, it may benefit from various tax concessions, subject to certain limits. Employers must offer access to a Personal Retirement Savings Account (“PRSA”) to “excluded employees” (*ie* those whose employer does not operate a pension scheme or where there is a waiting period of over six months to join the scheme).

INCENTIVE SCHEMES

Certain provisions in tax legislation provide reliefs to act as an encouragement to employees to participate in the ownership of their employer company through share award and share option schemes. There are no tax incentives to encourage employers to operate commission or bonus schemes but such schemes are sometimes linked with tax-efficient share schemes. There are also further tax incentives available for certain key employees in the Research & Development area.

FRINGE BENEFITS

Most fringe benefits are subject to income tax as benefits in kind. One such benefit commonly provided by employers is payment of the employee’s contributions to a private health insurance scheme (operated by VHI or other health insurance providers) for the employee and his or her dependants. For more senior positions, the use of a car is frequently provided, but this is also subject to income tax as a benefit in kind.

DEDUCTIONS/TAX

Deductions must be made from all employee salaries and wages for income tax under the Pay As You Earn (PAYE) system, in respect of social insurance contributions, the Universal Social Charge (USC) and to cover amounts payable under court orders. Other deductions can be made only after obtaining the written consent of the employee.

Social Security

COVERAGE

With some exceptions, the Irish social security system covers all employees in the private sector who are over age 16 and who earn €38 or more per week (a worker who earns less than €38 per week is covered only for occupational injuries). The social security system provides for benefits to cover retirement, disability and survivors' pensions, sickness, maternity leave, industrial injury, unemployment, disability, social assistance and family allowances.

Contributions

Contributions are generally made by both employers and employees, and are made as follows for Class "A" employees:

Employers PRSI

- o Salary equal to or less than €376.00 per week/€19,552 per annum – 8.5%
- o Salary greater than €376.00 per week/€19,552 per annum – 10.75%

Employees

The employees' contributions are made up of Pay Related Social Insurance ("PRSI") and a "Universal Social Contribution" as follows:

- o PRSI: 4% payable on salary (if greater than €352.00 weekly)

Universal Social Contribution

- o Since the 2017 Budget, incomes of €13,000 or less are exempt from USC
- o Where the gross income exceeds the exemption limit of €13,000, the following rates apply:

- | | |
|-----------------------------|--|
| – €0 to €12,012 @ 0.5% | – PAYE income in excess of €100,000 @ 8% |
| – €12,013 to €18,772 @ 2.5% | – Self-employed income in excess of €100,000 @ 11% |
| – €18,773 to €70,044 @ 5% | |
| – €70,045 to €100,000 @ 8% | |

The Department of Social Protection introduced a "JobsPlus" employer incentive scheme to apply to certain employments commencing on or after 1 July 2013. This scheme replaces the existing "Employer (PRSI) Incentive Scheme", which remains available in respect of certain employments commenced before 1 July 2013.

Hours of Work

Under the Organisation of Working Time Act 1997 certain prescriptive descriptions regarding working hours and rest breaks are set down.

The maximum average working week is 48 hours. Hours may be averaged over a period of two, four or six months, depending on the circumstances.

The Act also requires employers to provide rest breaks to employees. Employees have an entitlement to a 15 minute rest break where up to four and a half hours have been worked and 30 minutes where up to six hours have been worked. These breaks may be varied either by collective agreement (which must be approved by the Labour Court) between the employees' representatives and the employer, or by Regulations made applicable to a particular sector. In such cases, compensatory rest must be provided.

Special provisions apply to night workers, ie those who work for at least three hours between midnight and 7am and at least half of whose annual working time is night work. Employers must not permit night workers to work for more than an average of eight hours in any 24 hour period. The averaging period for night workers is two months (although longer periods are permitted in certain circumstances).

Holidays and Time Off

There are nine public holidays in respect of which employees are permitted, at the option of the employer, to one of the following: (a) a paid day off on that day, (b) a paid day off within a month of that day, (c) an additional day of annual leave or (d) an additional day's pay.

In addition, employees are generally entitled to a minimum of 20 days' holiday per year, although an employee must have worked a certain number of hours for a particular employer for the full holiday year in question to be entitled to the full 20 days. Otherwise, holidays are granted on a pro rata basis.

FAMILY LEAVE

The most important rights under the Maternity Protection Acts 1994 and 2004 are the right to return to work after maternity leave and the right to maternity leave (including additional maternity leave).

Female employees are entitled to attend ante-natal appointments during their working hours and to take maternity leave of up to 42 weeks (26 weeks 'ordinary maternity leave' and 16 weeks 'additional maternity leave') provided the employer is given at least four weeks' notice of the commencement of such leave. The maternity leave must include at least two weeks before the date of the birth and at least four weeks after. An employer is not obliged to pay the employee during maternity leave, but the State provides a maternity allowance of 80 per cent of the employee's gross earnings during the first 26 weeks' leave, subject to a maximum level determined from time to time by the Government. The employee is also entitled to take up to 16 weeks' additional maternity leave entirely at her own expense.

The Paternity Leave and Benefit Act 2016 now provides long awaited statutory paternity leave and it has brought Ireland in line with other EU countries.

The leave is available to all fathers, including self-employed, same sex couples and those adopting. The legislation provides a “relevant parent” with two weeks’ continuous statutory paternity leave from his or her employment, to be taken within 26 weeks of the birth/adoption of a child. A relevant parent is defined as someone other than the mother of the child who is (a) in the case of a child to be adopted, the spouse, civil partner or cohabitant of the adopting mother or the sole male adopter of the child or (b) in any other case, the father of the child, the spouse, civil partner or cohabitant of the mother of the child or a parent of the child within the meaning of section 5 of the Children and Family Relationships Act 2015.

The leave may be postponed in certain circumstances, such as the sickness of a relevant parent and hospitalisation of the child. There are also various protections for employees on paternity leave in line with existing employment protections for those on maternity and adoptive leave, such as the avoidance of termination or notice of termination of employment.

In addition, a relevant parent is entitled to receive a social welfare payment of €230 per week, the same rate as maternity benefit. The paternity benefit will be paid to relevant parents who are self-employed and employed provided they satisfy the requisite PRSI contribution requirements. Similar to maternity leave, an employer may decide to pay an employee during the two week period; however they are not required to do so.

The Parental Leave Acts 1998 and 2006 (as amended) give parents of children the right to 18 weeks’ unpaid leave in respect of each such child. The leave must be taken before the child is eight years old (subject to modifications in the case of an adopted child or a child with a disability or a child with a long term illness) and may be taken as a continuous period, in portions or, with the agreement of the employer, by working reduced hours. While the leave is unpaid, it is reckonable for the purposes of employment rights.

Female employees, and in certain limited circumstances male employees, are entitled to take up to 40 weeks’ adoptive leave. Adoptive benefit is payable by the State for the first 24 weeks. An employee may take an additional 16 weeks’ leave during which no benefit is payable.

Employees may in limited circumstances take up to 104 weeks’ unpaid carer’s leave to care for an incapacitated dependant.

ILLNESS

In the absence of an express term in a contract of employment concerning a company sick pay scheme, or a term implied as a result of custom and practice, an employee has no entitlement to receive money from the employer during any period of absence due to sickness or injury. Thus, during such periods of absence, the employee must rely wholly upon social welfare benefits (if entitled).

Larger companies usually provide for payment of full wages for a limited period of absence due to illness or injury, subject to a refund to employers in respect of the State benefits received by the employee.

Health and Safety

ACCIDENTS

All employers are required to take steps to ensure that their employees are working in as safe an environment as is reasonably practicable. That standard “so far as is reasonably practicable” is a high threshold pursuant to the Safety, Health & Welfare at Work Acts 2005 to 2014 (the “SHW Acts”).

Employees can bring civil claims against their employers for any loss suffered as a result of accidents at work or industrial illnesses and can also claim compensation from the State Occupational Injuries Benefit Scheme.

CRIMINAL LIABILITY

A criminal offence is committed when the duties imposed by the various sections of the SHW Acts are breached. Those offences can be divided into separate sets: less serious offences for which the guilty person is liable on summary conviction to a fine not exceeding €3,000, and the more serious offences for which, on summary conviction, one can be liable to a fine not exceeding €3,000 and/or imprisonment for a term of up to six months. For the more serious offences upon conviction on indictment, a person can be liable to a fine of up to €3,000,000 and/or imprisonment for a term of up to two years. The “more serious offences” include such straightforward duties as providing information to employees regarding health and safety pursuant to section 9 of the SHW Acts or providing instruction, training and supervision to employees pursuant to section 10 of the SHW Acts (*ie* it is not just contravention of the more obviously important duties which can attract the higher penalty).

DIRECTORS’ LIABILITY

Where an offence under health and safety legislation has been authorised, or consented to, by a manager or a person who purports to act in such a capacity, then that person, as well as the undertaking, shall be guilty of an offence and shall be liable to be prosecuted.

HEALTH & SAFETY CONSULTATION

An employer must provide information in relation to health and safety to employees and the Safety Representative (if any) in a form, manner and language that is understood by employees.

An employer must consult with employees and take account of any representations made by the employees for the purpose of giving effect to the employer’s statutory duties in respect of safety, health and welfare.

As this is mandatory, some form of consultation mechanism must be provided. However, safety committees are not mandatory. The Health and Safety Authority (HSA) has issued guidelines on the effectiveness of consultation arrangements including advice on the selection of safety committees (where one is put in place).

The employees may, if they so wish, select a Safety Representative (or, by agreement with the employer, more than one) from “amongst their number”. The

Safety Representative may consult with, and make representations to, the employer on safety, health and welfare matters relating to the employees in the place of work.

The Safety Representative has a number of statutory rights and powers including:

- the right to information from the employer in connection with the safety, health and welfare of employees;
- the right to make representations to the employer as to safety, health and welfare. The employer is required to consider these and, where necessary, act on them. The requirement to act on representations from the Safety Representative is more demanding than would apply to representations from other employees;
- the power to carry out general inspections or investigate potential hazards on notice to the employer. The employer cannot unreasonably withhold permission for these;
- the Safety Representative must be informed by the employer that a HSA Inspector has arrived at the place of work and also has a right to accompany the Inspector, unless the Inspector is investigating a specific incident. The Safety Representative may make oral or written representations to an Inspector and is also entitled to receive advice and information from an Inspector;
- the Safety Representative is entitled to time off “as may be reasonable”, without loss of remuneration:
 - to acquire knowledge to carry out his/her functions; and
 - to carry out his/her functions, *eg* conducting investigations and inspections.
- the Safety Representative is to suffer “no disadvantage arising out of the performance of his or her duties”; and
- the right to investigate accidents and dangerous occurrences (provided that it will not interfere with the performance of another’s statutory obligation).

The Health and Safety Guidelines state that in most organisations, a single Safety Representative will be adequate to meet safety and health requirements but that, if an employer has different locations, a Safety Representative can be appointed at each place of work.

SAFETY STATEMENTS

Every employer must have a Safety Statement in relation to every place of work. This is a statement based upon a risk assessment specifying how health and safety should be managed. An exemption exists for employers who have fewer than three employees if an approved code of practice exists, and in those situations compliance with that approved code of practice is sufficient.

PROHIBITION ON SMOKING IN THE WORKPLACE

Smoking is banned in enclosed workplaces by virtue of the Public Health (Tobacco) Act 2002 as amended (the “2002 Act”). Any employer who allows a contravention of the prohibitions or restrictions contained in the 2002 Act will be guilty of an offence unless they can show that they made all reasonable efforts to ensure compliance with the provisions of the 2002 Act.

Industrial Relations

TRADE UNIONS

Only those trade unions with 1,000 or more members and on behalf of whom money has been deposited in court are licensed to take part in collective bargaining. It is an offence for a union to enter into any sort of negotiations without such a licence, although groups of workers are legally entitled to negotiate on a collective basis with their own employer.

There is no legal obligation on an employer to recognise a trade union, and the “post-entry closed shop” has been declared unconstitutional. The Labour Court has, under the Industrial Relations (Amendment) Act 2015, been given power to adjudicate in industrial disputes and in limited circumstances to issue binding determinations where the normal voluntary procedures have not resolved the issue in dispute.

Trade unions may be affiliated to the Irish Congress of Trade Unions (ICTU).

The largest employers’ association is the Irish Business and Employers’ Confederation (IBEC), which acts as a central adviser to its members on matters concerned with employer/union relations. In general, it will take part in collective negotiations only when requested to do so by one of its members.

For 22 years, the Government, employer associations, trade unions and other interested bodies entered into “social partnership agreements” with regard to issues such as wages, industrial relations and other reforms. However in 2009, social partnership effectively collapsed following the failure to agree on a new deal in light of the economic crisis.

COLLECTIVE AGREEMENTS

Collective agreements are generally not legally enforceable by the parties to them. However, the terms of such an agreement may become incorporated in a contract of employment and, hence, be enforceable by the employer against the employee or vice versa. Collective agreements in the more traditional industries tend to be negotiated on an industry-wide basis, but more recently the trend with established industries is towards collective bargaining at local level.

TRADE DISPUTES

Irish workers have no statutory right to strike or to take industrial action. However, the Supreme Court has held that there is an implied term to be read into every contract of employment to the effect that serving a strike notice not shorter than the contractual notice period and taking action pursuant to such a notice is not a breach of contract. Prior to the introduction of the Industrial Relations Act 1990, there was some debate as to whether a right to strike should be included in it. Ultimately that Act preserved the position whereby striking employees are granted certain immunities from liability which they might otherwise incur for action in contemplation of or in furtherance of a trade dispute.

However, no immunity is given to employees acting in defiance of a strike ballot or to an individual employee who has failed to follow the proper procedures. In a measure designed to improve industrial relations and to facilitate the resolution of disputes between unions and employers, a code of practice was introduced. This

recognises that the primary responsibility for the resolution of disputes lies with the parties involved, and it lays down an appropriate dispute resolution procedure.

There are also certain limitations to the circumstances in which a court will grant an injunction to an employer to prevent a strike.

INFORMATION, CONSULTATION AND PARTICIPATION

The Transnational Information and Consultation of Employees Act 1996 requires businesses with over 1,000 employees in the European Economic Area (which includes all EU states, together with Norway, Iceland and Liechtenstein) and at least 150 employees in each of two EEA states, to establish procedures to inform and consult employees in relation to transnational matters affecting the business at EEA level. Employers are required, either on their own initiative or at the request of at least 100 employees in at least two EEA states, to establish a Special Negotiating Body for the purposes of negotiating agreed information and consultation arrangements. Whilst the role of the “European Works Council” is limited, it does involve a consultative process with worker representation and therefore introduced a new concept for employers in non-unionised workplaces.

EU Directive 2002/14/EC (the Information and Consultation Directive), which potentially imposes further consultation obligations on businesses in Ireland with over 50 employees through local works councils, has been implemented in Irish law by the Employees (Provision of Information and Consultation) Act 2006.

Where collective redundancies are proposed, under the Protection of Employment Acts 1977 to 2014, the employer is obliged to consult with the employee representatives and notify the Minister for Jobs, Enterprise and Innovation; failure to do so may result in the employer being fined after prosecution by the Minister. The employer must notify the Minister at least 30 days before the first dismissal takes place and must consult with the employee representatives at least 30 days before the first notice of dismissal is served. There is a maximum fine of €5,000 per offence on conviction for failure to provide information to and/or consult with the employee representatives and failure to notify the Minister. However, fines can be up to €250,000 for implementing the redundancies before notifying the Minister. Employees or their representatives may also refer the issue of non-consultation to a Adjudication Officer who may award up to four weeks’ remuneration as compensation.

Additional provisions apply in relation to “exceptional collective redundancies”. An exceptional collective redundancy is a dismissal which is collective and compulsory and where the dismissed employees are replaced by others who will perform essentially the same functions but on inferior terms and conditions of employment. Penalties can be up to five years’ salary and/or fines of up to €250,000.

Consultation obligations may also arise under existing collective agreements, or the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 referred to under Mergers & Acquisitions on page 16.

Mergers and Acquisitions

GENERAL

The two most common methods of buying or selling a business are share (equity) sales and asset sales. Each has its own advantages and disadvantages.

SHARE (EQUITY) SALE

The principal employment law consequence in a share sale is that employees remain employed by the target company on their existing terms and conditions. There is no automatic termination of employment, nor a provision to “offer” the employee employment going forward; he/she remains in employment with the target following the sale.

There is no legal requirement to consult with employees ahead of a share sale unless there is in existence an agreement to do so (such as may be contained in a collective agreement with a trade union or in a works council agreement). However, best practice would be to keep employees informed of the transaction so as to avoid employee unrest.

ASSET SALE

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (the “**2003 Regulations**”) implemented the 2001 European Union Acquired Rights Directive (Directive 2001/23/EC). It governs transactions involving the sale of businesses or assets.

Upon a transfer of a business or undertaking falling within the 2003 Regulations, all rights and obligations arising from contracts of employment (with an exception for certain pension rights), as well as any rights under collective agreements, are automatically transferred to the transferee (purchaser). The dismissal of employees by reason of the transfer is prohibited unless this is done for “economic, technical or organisational reasons entailing changes in the workforce”. The status and functions of existing employee representatives are also preserved.

INFORMATION AND CONSULTATION REQUIREMENTS IN AN ASSET SALE

Where the 2003 Regulations apply, the transferor and transferee must inform, and in certain circumstances consult with, the representatives of their employees that are affected by the transfer. They should be informed of when the transfer will take place, the reasons for the transfer, the implications the transfer will have for the workforce, any ‘measures’ envisaged in relation to the employees and certain details relating to agency workers. This information must be given to the representatives, where reasonably practicable, not later than 30 days before the transfer occurs and in any event in ‘good time’ before the transfer (which could be a period greater than 30 days).

Where there are no employee representatives, the relevant employer(s) must put in place a procedure whereby representatives can be appointed from amongst the employees themselves. Time to appoint representatives needs to be factored into the timing of any transaction. These information and consultation obligations apply to all transfers to which the 2003 Regulations apply regardless

of the number of employees involved. Where the transferor or the transferee envisage any 'measures' in relation to the employees (a change to the employees' work practices, work location, redundancies *etc*) the employees' representatives must be "consulted" with a view to reaching an agreement. Provided that there has been meaningful consultation, there is no obligation to actually reach an agreement.

NOTIFICATION OF AUTHORITIES

Save for where employment permits are in place, there is no general obligation to notify the authorities about a transfer or its consequences, however certain regulated industries (*eg* financial services) may be required to notify the relevant regulatory authorities (*ie* the Financial Regulator) or indeed certain transactions may require approval by the Competition Authority.

LIABILITIES

A complaint of a contravention of the 2003 Regulations may be referred to an Adjudication Officer at first instance. If he upholds any complaint, the Adjudication Officer may require the employer to pay to each employee compensation not exceeding four weeks' remuneration for a breach of the notification and consultation obligations and not exceeding two years' remuneration for a breach of any other provision of the 2003 Regulations.

An Adjudication Officer is also able to grant reinstatement or reengagement. In addition, it may be possible to obtain an injunction from the courts, particularly in cases where time is of the essence, although such cases are very rare. The decision of an Adjudication Officer may be appealed to the Labour Court. If the employer fails to carry out a decision, an application can be made to the District Court to seek an order directing the employer to comply.

CROSS BORDER MERGERS

The European Communities (Cross-Border Mergers) Regulations 2008 (the "**Cross Border Merger Regulations**") (as amended) implemented in Ireland EU Directive 2005/56/EC on Cross-Border Mergers. These Cross Border Merger Regulations facilitate mergers between Irish companies and those located elsewhere in the European Union or in EEA States that have implemented the Directive. The Cross Border Merger Regulations permit true "mergers" for the first time under Irish law, providing a new way for Irish public and private limited companies to make or receive a transfer of assets and liabilities to or from companies in other European/EEA jurisdictions.

Generally under the Cross Border Merger Regulations an employee's rights and obligations arising from his contract of employment will transfer to the successor company. The Cross Border Merger Regulations also provide for the protection of "employee participation rights" if a system for such employee participation currently exist in any of the merging companies.

Data Protection

EMPLOYMENT RECORDS

Employers' data protection obligations are set out in the Data Protection Acts 1988 and 2003 (the “Acts”), which implement the European Data Protection Directive 95/46/EC (the “Directive”). The Acts regulate how employers collect, store and use personal data held by them about their employees (past, prospective and current). More onerous obligations are imposed in respect of sensitive personal data. Infringement of the Acts may lead to an investigation by the Data Protection Commissioner (the “DPC”), the DPC issuing an enforcement, information or prohibition notice or compensation claims from affected employees. In addition, there are certain offences under the Acts which, if prosecuted, may lead to fines of up to €4,000 on summary conviction or up to €100,000 for conviction on indictment.

Employers, as data controllers, must ensure that personal data about their employees is collected and processed fairly, is kept accurate and up-to-date, and is not kept for longer than necessary. Appropriate security measures must be taken by employers against unauthorised access to, or alteration, disclosure or destruction of, personal data. Employers should also be aware that, where there is a security breach relating to personal data, it may be necessary to inform the Data Protection Commissioner and/or the affected individuals.

Employers should have a data protection policy in place including a data protection notice and a defined policy on retention periods for all categories of personal data and provide appropriate staff training in data protection.

EMPLOYEE ACCESS TO DATA

Employees, as data subjects, have the right to make a subject access request. This entitles them, subject to certain limited exceptions, to be informed as to what personal data is held about them and to whom it is disclosed, to obtain a copy of their personal data and have personal data amended or deleted where it is incorrect.

Employers should respond to subject access requests as soon as possible or at the latest within 40 days from receipt of the written request. Subject access requests cover personal data held in electronic form and in manual form (provided that, in the case of manual data, it is held in a “relevant filing system” as defined by the Acts). Employers may charge up to €6.35 for supplying employees with a copy of their personal data.

FORCED ACCESS REQUESTS

Employers should be aware that it is an offence under the Acts to require employees or prospective employees to make a subject access request in relation to themselves or to supply the results of such a request (*eg* for the purpose of carrying out background checks).

MONITORING

As a result of the electronic workplace, organisations commonly have a general communications policy which in certain instances confers a right on the employer to monitor employee communications. Such policies apply to all employees including those who travel on business with PCs, laptops or other devices and those employees who work from home.

All monitoring of employee email, internet and telephone use and CCTV monitoring is subject to compliance with the Acts. Certain types of monitoring may also be subject to the Postal and Telecommunications Services Act 1983 (as amended by the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993) (the “1983 Act”) and the EC (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011. For example, Section 98 of the 1983 Act makes it an offence to intercept (ie listen to or record) any telecoms message “in the course of transmission” unless either the sender or recipient has consented to such listening or recording.

In order to comply with the Acts, it is important to ensure that employees are notified of any potential monitoring, as well as the purpose for which it may be carried out. Such notification will usually be included in the general communications policy and/or the data protection policy referred to above. The DPC has issued guidelines in relation to employee monitoring, the guiding principle being that any limitation of the employee’s right to privacy should be proportionate to the likely damage to the employer’s legitimate interests.

TRANSMISSION OF DATA TO THIRD PARTIES

Employers should not provide employee data to third parties otherwise than in accordance with the principles and processing conditions set out in the Acts.

It may be necessary to obtain express consent from the employee to such disclosure in the absence of a legitimate business purpose for the disclosure and depending on the nature of the information and the location of the third party. In any event, employees should always be made aware of the persons to whom their personal data may be disclosed. Where the data is being transferred to a third party within the EEA, a written contract must be entered into imposing certain obligations on the recipient, including that they will process the data in accordance with the instructions of the transferor and comply with the security obligations set out in the Acts.

Where the third party is based outside the EEA, the Acts prohibit the transfer of data unless that country ensures an adequate level of protection for personal data or one of a series of limited exceptions apply. The most common exception is to enter into a data transfer agreement incorporating the model clauses that have been approved by the European Commission. Other exceptions include the implementation of Binding Corporate Rules or fully informed and freely given consent of the data subject (although this may be harder to demonstrate in an employment context).

Where employee data is requested in the context of a commercial transaction, anonymised data should be provided.

GENERAL DATA PROTECTION REGULATION

On 15 December 2015, the European Commission, Parliament and Council reached an agreement on the General Data Protection Regulation (the “GDPR”). The GDPR, which will replace the Directive, is expected to be adopted in early 2016 and will come into force two years thereafter. The GDPR will be directly applicable in all Member States and will introduce significant changes to data protection law across the EU, including greater obligations in respect of the processing of personal data; fines of up to €20 million or 4% of total worldwide annual turnover for breach of the GDPR; an obligation for data controllers to keep records of data processing; and, in certain circumstances, an obligation to appoint a data protection officer to monitor compliance with the GDPR.

Termination of Employment

INDIVIDUAL TERMINATION

Under the Unfair Dismissals Acts 1977 to 2015 (the “Unfair Dismissals Acts”) an employee who has worked for that employer for more than one year is entitled to rely on the legislation to challenge a dismissal (though exceptions exist to the requirement to have one year’s service).

Under the Unfair Dismissals Acts, a dismissal is deemed to be unfair and the onus is on the employer to establish otherwise. Dismissals may be justified on one of a number of grounds, including the employee’s competence, capability, conduct or redundancy. In addition to demonstrating that there were substantial grounds justifying the dismissal, the employer must show that it acted reasonably in effecting the dismissal. Therefore, an employer considering dismissal for poor performance should apply fair procedures such as notifying the employee of the dissatisfaction and affording an opportunity to improve before effecting the dismissal. In a redundancy situation, the employer must show not only that a genuine redundancy situation existed, but also that the employee was fairly selected for redundancy.

Employees must be informed about the disciplinary and dismissal procedures in force at their workplace and should be notified of any changes. The employer must properly investigate any alleged breaches of working practices and may suspend an employee on full pay during such an investigation if allowed under the contract of employment. The procedures followed by an employer are vitally important when deciding whether a particular dismissal was fair or not.

Individual contracts may provide for longer notice periods and often do so in the case of senior executives. Notice may be oral, although collective agreements may stipulate that it be in writing. Payment in lieu of notice is allowed if included in the contract of employment. Any dismissed employee is entitled to require the employer to supply a written statement of the reasons for dismissal within 14 days. After the initial 13 weeks of employment, an employee must give one week’s notice of his or her intention to resign though the contract of employment will usually proscribe a longer period.

Notice

In cases other than gross misconduct, when the employer is entitled to terminate without notice, an indefinite/permanent contract may be terminated by notice. However, the Unfair Dismissals Acts must also be complied with.

The following minimum statutory notice periods apply to all employees who have completed 13 weeks of continuous service with the employer:

Period of Employment	Notice
13 weeks - 2 years	1 week
2 years - 5 years	2 weeks
5 years - 10 years	4 weeks
10 years - 15 years	6 weeks
15 years or more	8 weeks

A former employee who has been dismissed without proper notice being given can claim salary (and loss of other benefits) in lieu of notice.

Claims of unfair dismissal are heard by Adjudication Officers from the Workplace Relations Commission. The remedy which may be sought or awarded in the case of unfair dismissal is reinstatement, re-engagement and/or compensation of up to a maximum of two years' remuneration.

Determinations of the Adjudication Officers are subject to appeal to the Labour Court, and finally to the High Court on a point of law only.

Employees may alternatively apply to the courts directly claiming wrongful termination of their contract of employment and apply to the courts for injunctions restraining the purported termination.

SPECIAL PROTECTION

Dismissals which are connected with certain specific matters such as pregnancy, religion, politics, the making of a potential disclosure, race, age or trade union membership are automatically unfair. Selective dismissals of employees on strike are also unfair.

CLOSURES AND COLLECTIVE TERMINATIONS

As mentioned previously, redundancy is a permissible reason for individual termination. However, it is frequently associated with plant closure and collective dismissals.

Where an employer closes a workplace, or work of a particular kind is no longer needed, the affected employees who have worked for that employer for a minimum of two years are entitled to statutory redundancy payments calculated according to their length of service and rate of pay. Entitlement to such a payment may be lost if the employee unreasonably refuses an offer of suitable alternative employment in certain circumstances.

Disputes arising as to entitlement to a redundancy payment are referred to an Adjudication Officer. An employee who is to be made redundant is entitled to reasonable paid time off during the last two weeks of the notice period in order to look for alternative work or attend training sessions.

At present, employees can avail of a number of tax reliefs in respect of termination payments on redundancy.

Depending on the numbers of redundancies involved (in relation to the total workforce of the undertaking), employers may be under a duty to inform the Minister for Jobs, Enterprise and Innovation before making collective redundancies and to notify and consult any employee representatives.

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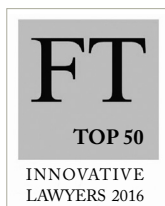
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