



NEWSLETTER • ISSUE 2 SUMMER 2014

Welcome to the Philip Lee Employment Law newsletter. If you would like to know more about anything we have covered, or indeed any other employment matter, please do not hesitate to contact us. Our contact details can be found below or on any page of this publication.

ABOUT US

Philip Lee is a leading business law firm with offices in Dublin and Brussels.

Our approach to our clients is clear. Their goals are our goals. Working in partnership, we aim to deliver first class legal services and advice to support our clients in achieving their business goals.

For further information please contact **Patrick Walshe** at 353 (0) 1 237 3700 or at pwalshe@philiplee.ie.

Employment Permits (Amendment) Act 2014 becomes law

The Employment Permits (Amendment) Act 2014 has been signed into law and is expected to be commenced in September 2014.

The Act aims to address problems identified in a 2012 High Court case (**Hussein v The Labour Court and Younis**) and will also introduce significant changes to the current employment permit system.

The **Hussein** case attracted a great deal of attention at the time it was handed down. Mr. Younis had been awarded €92,000 by the Labour Court following a successful claim against his employer. Mr. Younis argued, successfully, that he had been exploited by working up to 77 hours a week for as little as 51 cents an hour.

His employer challenged the award of damages in the courts, arguing that as Mr. Younis did not have a valid work permit, he was outside the scope of employment law. The High Court, with reluctance, agreed with the employer's position and quashed the award of €92,000.

The court noted, in its judgement, that Section 2 of the Employment Permits Act 2003 made any contract between an employer and a worker not having permission to work in the State substantively illegal. This meant, in effect, that non-national workers without the requisite permission fall outside of the scope of Irish employment law.

The new legislation attempts to remedy this by providing that if a non-national can prove to the satisfaction of a court that "reasonable steps" were taken to secure a permit, then the worker may take a civil action for compensation against their employer for work done or services rendered. It obviously remains to be seen whether affected non-nationals will make use of this remedy in practice.

Other changes

The Act will also make a number of amendments to other aspects of the work permit system:-

- The replacement of the current Green Card scheme with a 'Critical Skills Employment Permit' in an effort to attract foreign nationals having skills that are in short supply in the Irish labour market.
- A 'General Employment Permit' will be available for employees having skills of a more general nature where it is demonstrated, among other things, that the employer was unable to fill the position from the current labour market (Labour Market Needs Test);
- The retention of the 'Intra-Company Transfer Employment Permit' to allow for the temporary transfer of employees between affiliated foreign and Irish companies;
- Provision for a 'Contract Service Provider Permit'. This will allow for the employment in Ireland on a temporary basis of employees of foreign companies that have entered a contract with an Irish company;
- The introduction of an 'Exchange Agreement Employment Permit' to allow individuals to whom a designated exchange agreement applies to work in the State;
- A 'Sports and Cultural Employment Permit' which will enable certain sports or cultural professionals

to work in the State; and

- 'Internship Employment Permits' will allow students of foreign institutions to work in the State, where that is a key component of the course which they are following.

Whistleblower legislation now in force

It is worth reiterating that the **Protected Disclosures Act, 2014** is now law and all employers should carefully consider the possible impact on their workplaces.

Our update on the legislation is still available at:-

[http://www.philiplee.ie/gns/news-and-analysis/14-07-15/Whistleblower Bill becomes law.aspx](http://www.philiplee.ie/gns/news-and-analysis/14-07-15/Whistleblower%20Bill%20becomes%20law.aspx)

Briefly, the legislation prohibits discrimination against whistleblowers who reveal certain information. For employers, one of the most significant changes to the law is that the maximum penalty for dismissing an employee for whistleblowing is increased from two to five years.

Council Employee gets €70,000 for religious discrimination

A July decision of the Equality Tribunal has attracted a great deal of attention and should be carefully considered by employers.

South Tipperary County Council was found by the Tribunal to have discriminated against an employee on religious grounds. The employee, John McAteer, was an evangelical christian who maintained that his belief system obliged him to proselytise.

He was initially warned about this following a complaint from a co-employee in 2007 and Mr. McAteer was told to stop sharing his faith during working hours.

Subsequently he was observed speaking to members of the public in 2008 about religion, again during working hours. Later in 2008, he received a final written warning for discussing religion with another member of the public, again during working hours.

Finally, in early 2009, Mr. McAteer was observed speaking with a member of the public about religion. The Council decided to convene an investigation.

Mr. McAteer's position was that the prohibitions on sharing his beliefs with third parties was a restriction. The Council did not agree and suspended him for two months, on foot of a finding of gross misconduct. The Council also directed Mr. McAteer to undergo counselling. He did so, but was witnessed in 2010 speaking to a third party about his religious beliefs. He was dismissed.

In the Equality Tribunal, the Council denied that religious discrimination had occurred, arguing that Mr. McAteer was free to preach his beliefs outside of working hours. The Tribunal did not agree and noted that there was no evidence that the Council had been brought into disrepute as a result of Mr. McAteer's actions.

The Tribunal also seemed to place emphasis upon the fact that members of staff had possibly been asked to monitor Mr. McAteer "...given the number of staff who reported to management they saw the complainant speaking to a member of the public...".

The decision is one that many employers will find difficult to accept. It does not seem unreasonable to restrict employees from expressing personal beliefs in the course of their work. As a matter of course, an employer will try to project a certain image to clients, customers and the world at large.

Possibly the decision is one that can be distinguished on its own facts. It certainly seems to be the case that the Tribunal objected to what it perceived to be

ongoing monitoring of the employee in question.

However, if the case establishes a precedent, it is a worrying one. It does not seem unduly onerous to require employees not to mention certain subjects during interaction with customers or clients (or any third parties encountered by the employer during the working day). It is not difficult to imagine offence being taken at uninvited comments about someone's religious beliefs. Certainly, most employers would discourage this kind of interaction with clients and customers (and probably with justification).

Further developments in this area are keenly awaited.

New Court of Appeal Established

The Minister for Justice and Equality has welcomed the successful passage of the **Court of Appeal Bill 2014** through the Oireachtas, commenting that "*the Government has responded in the most positive way possible to the mandate given to it by the people last October to provide for the establishment of a new Court of Appeal.*"

The Bill, published in July, provides for the establishment of the new Court and makes the necessary legislative provision to ensure that it is accommodated within the existing courts' structure.

It is hoped that the new Court will deliver significant reductions in the waiting time for the hearing and determination of appeals. Following the implementation of other arrangements of an implementing nature, it is expected that the Court of Appeal will be operational in October.

Social Welfare and Pensions Act, 2014

The **Social Welfare and Pensions Act 2014** has been signed into law by the Irish President. This Act

transposes Directive 2010/41/EU on the application of equal treatment between men and women engaged in self-employment activity.

Amongst other measures, section 19 of the Act will extend social insurance cover to spouses/civil partners of a self-employed contributor in cases where that spouse/civil partner is participating in that person's business and earning more than €5,000 a year. This means that the spouse/civil partner will, under the social insurance system, be able to establish entitlement to Maternity Benefit, Widow's, Widower's or Surviving Civil Partner's Contributory Pension and State Pension Contributory in their own right.

Commenting at the time of the introduction of the legislation, the Minister for Social Protection commented: "This is a very important reform and essentially means that a group of people who had previously been excluded from contributory State pensions will now be able to qualify over time for pension cover in their own right. This will ensure equality of access to social insurance cover for the self-employed and assisting spouses and civil partners as required under EU law. In the case of women, they will also be able to qualify over time for Maternity Benefit."

Section 7 of the Act provides that if an employer has a debt owing to the Minister for Social Protection in respect of redundancy lump sum payments and that employer qualifies for a refund of PRSI contributions, then the debt owing to the Minister can be recovered from the PRSI refund.

Interesting recent decisions from the Tribunals

➤ The EAT dismissed a claim brought by a security guard who was watching YouTube while thieves broke into a car park. The incident was witnessed on CCTV but the applicant did nothing. Despite

having 12 years' service, the employer regarded the incident as gross misconduct. The Tribunal agreed (**Adeagbo – v - Mitie Facilities Management Limited**).

➤ A Dunnes Stores employee who was sacked for selling alcohol to a minor was awarded €13,500 for unfair dismissal. The alcohol was sold as part of a Garda Siochána test purchase system. The employee admitted that she had not asked for ID but stressed that she had been worried about a sick child and was not thinking clearly. She was suspended and then dismissed three days later. The Tribunal found against the store as it ruled there was an absence of fair procedures (specifically, no oral appeal was offered) and the decision was disproportionate (**Fitzpatrick – v – Dunnes Stores**)

➤ In an interesting decision of the EAT, a secretary in a private and fee-paying girl's school failed in an attempt to avoid public pay cuts. Because the school was funded in part by public funds, the Department of Education sought to impose pay cuts in line with the Financial Emergency Measures in the Public Interest Act 2009. The employee argued that as she was paid 100% from private funds (including school fees), the Act should not apply to her. However, the EAT ruled that the reduction was made legally (**Nic Bhradaigh – v – Mount Anville**)

Legislation Update

➤ Sections 13 and 14 of the **Social Welfare and Pensions Act 2013** have been commenced as of 1 August 2014. These provide for the recovery of certain illness related social welfare payments from personal injuries compensation awards made to individuals. Section 14 of the Act makes amendments to the Personal Injuries Assessment Board Act 2003 in the light of the recovery provisions contained in section 13.

The Minister for Justice and Equality has brought the remaining sections of the Data Protection Acts into force with effect from 18 July 2014. Section 4(13) of the Acts, now in force, makes it unlawful for employers to require employees or applicants for employment to make an access request seeking copies of personal data which is then made available to the employer or prospective employer. This provision also applies to any person who engages another person to provide a service.

FOR MORE INFORMATION, PLEASE CONTACT:



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Patrick is a partner in the firm's Litigation and Dispute Resolution department and is also the head of the employment law unit. He specialises in commercial litigation and dispute resolution and has extensive experience in large commercial trials, including litigation in Ireland's commercial court. His practice areas include national and international contract disputes, employment and media law.

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