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Employment Law in Ireland – A Guide for International Employers

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This guide sets out an overview of Irish employment law for international employers looking at establishing or acquiring operations in Ireland. It covers the key rights and obligations which arise - from hiring an employee to work in Ireland through to termination, including the legal entitlement of such employees to work in Ireland.

1	Pre-Employment	3
2	Offers of Employment	5
3	Rights Arising During Employment	8
4	Rights Arising on Termination of Employment	12
5	Collective Rights	15
6	Enforcement of Employment Law Rights	17
7	Entitlement to Work in Ireland	19



1 Pre-Employment

Recruitment

The **Employment Equality Acts 1998 to 2015** (the “EEA”) prohibits an employer from discriminating against an employee or prospective employee in relation to access to employment, conditions of employment, training or experience for or in relation to employment, promotion or re-grading or classification of posts. Employers should ensure to operate fair recruitment procedures from the outset that are free from discrimination in order to be compliant with their obligations under the EEA. For example, job advertisements, interview questions, job application forms etc, should be free from discrimination on any (or all) of the the nine discriminatory grounds provided for in the EEA (these grounds are set out in more detail below). Employers cannot refuse to employ someone with a disability without considering reasonable accommodation, ie, if modifications could be made to the disabled candidates working environment or tasks in order to allow them to fully carry out the role.

Background Checks

Pre-employment background and reference checks are not required by law except for certain professions where police clearance is a legal requirement (eg, childcare workers). Checks in relation to education and reference checks from previous employers are quite common – albeit that is becoming increasingly common that employers will only provide statements of employment for former employees, as opposed to substantive references.

Criminal background checks are relatively uncommon in Ireland and generally limited to those who will be working with children or vulnerable adults, such as the elderly or infirm. It is now a statutory requirement for all organisations conducting relevant work with children and vulnerable persons to vet their prospective employees or volunteers prior to their commencing relevant work, and a failure to do so can constitute a criminal offence.

As a result of the **Spent Convictions Act 2016**, a person generally cannot be required to disclose a spent conviction to a current or prospective employer and cannot be penalised for not having done so, provided that: (i) at least seven years have passed since the conviction; and (ii) the sentence imposed was for 12 months or less. This exemption does not apply to persons employed or seeking employment with children or vulnerable persons, or with State entities in areas such as law, state departments, financial institutions, the Gardaí (police) and Defence Forces.

Companies must also comply with the various restrictions and duties under the **Data Protection Acts 1988 – 2003** regarding personal data and sensitive personal information that it may obtain in the course of such checks relating to the candidates. The checks should be carried out in a fair, consistent and non-discriminatory manner. Any such checks should therefore be limited to information that is directly relevant to the position for which the applicant is applying, and thus within the employer’s justifiable interests.

Medical Screening

Pre-employment medical checks are not legally required, but can be requested, particularly for roles where a minimum level of physical fitness or medical health is a relevant factor for the job, or as a pre-requisite for membership in an employer’s health insurance scheme. An employer should be in a position to show that screening of this type is necessary, proportionate and in pursuance of a legitimate interest, so as to justify the intrusion on the privacy of the employee. A decision not to hire someone on the grounds of information revealed in a medical examination may constitute disability discrimination. Certain data protection obligations should also be observed, such as securing the explicit consent of the employee to the relevant checks.





2 Offers of Employment

Employees in Ireland are typically employed under contracts of indefinite duration. This type of employment is referred to as “permanent employment” but in fact can be terminated on notice. In fact, even where contracts are specified to apply for a fixed-term, such contracts will typically include a notice provision that permits termination on notice before the end of the relevant term.

Unlike in the US, written contracts of employment are common in Ireland at every level. This is not a statutory requirement (save as set out below) but most international employers operating in Ireland do provide a written contract of employment, along with an associated employee handbook, as a matter of best practice.

At a minimum, under the **Terms of Employment (Information) Act 1994-2014** the following information must be provided in writing by the employer to the employee not later than two months after the commencement of employment:

- names of employer and employee;
- address of employer in Ireland;
- place of work or where there is no fixed place of work, a statement specifying that the employee is required or permitted to work at various places;
- title or nature of the job (ie, job description);
- date of commencement of employment;
- duration of a temporary contract;
- remuneration of employee (including when it is payable and the relevant pay reference period);
- that the employee may request a written statement of his / her average hourly rate of pay for any pay reference period;
- hours of work, including overtime;
- terms and conditions relating to paid leave, sick leave and pensions;
- requisite notice periods on the part of employee and employer;
- whether any collective agreements affect the terms and conditions of the employee’s employment; and
- a reference to any registered employment agreements or employment regulation order which applies to the employee and confirmation of where the employee may obtain a copy of such agreement or order.

Where an employee works outside Ireland for more than one month, an employer must also provide the following information:

- period of employment outside Ireland;
- currency in which payment is to be made;
- details of benefits in cash or kind; and
- terms and conditions governing employees’ repatriation.

In practice, most employers will take the opportunity to expand the mandatory statement of terms into a more comprehensive contract covering other terms and conditions, such as confidentiality etc. However, the minimum obligations set out above, apply equally to fixed term and part time contracts of employment.

Part-Time and Fixed-Term Employees

The **Protection of Employees (Part-Time Work) Act 2001** prohibits less favourable treatment of an employee due to their part-time status, in relation to conditions of employment, including remuneration and related matters. A part-time employee is defined as an employee whose normal hours of work are less than the hours worked by a comparable full-time employee.

Whilst employers are not under an obligation to grant requests for part-time employment, a Code of Practice on Access to Part-Time Working, gives employers guidelines on dealing with this issue, to which employers should have regard when considering any request.

The **Protection of Employees (Fixed-Term Work) Act 2003** provides similar protection to a fixed-term employee, who is defined as a person who enters into a contract of employment directly with an employer, where the end of the contract concerned is determined by an objective condition, such as arriving at a specific date, completing a specific task or the occurrence of a specific event. This Act prohibits less favourable treatment of an employee due to his / her fixed-term status in respect of conditions of employment compared to a “comparable” permanent employee.

Both part-time and fixed-term employees may be treated less favourably than their full-time or permanent comparators where such treatment is justified on objective grounds – ie, is based on considerations (other than the status of the employee as a part-time or fixed-term employee), and involves the achievement of a legitimate objective of the employer, with such difference in treatment being appropriate and necessary for that objective.

The maximum duration for which an employee can be employed on successive fixed-term contracts is now four years, unless there are objective grounds justifying the renewal of the fixed-term contract. An employer is obliged to inform fixed-term employees of any permanent vacancies which arise in the undertaking.

Agency Workers

Employers establishing themselves in Ireland should note that the use of agency workers does not relieve them of all of the obligations, that employers would normally have towards employees. This is particularly the case where the agency worker is paid directly by the employer. Even if this is not the case, certain employment rights apply, such as those relating to unfair dismissals, working time and maternity leave. For example, section 13 of the **Unfair Dismissals (Amendment) Act 1993** deems the hirer to be the employer of an agency worker for the purposes of unfair dismissals legislation.

The **Protection of Employees (Temporary Agency Work) Act 2012**, gives agency workers the right to equal treatment in respect of certain core terms and conditions of employment (specifically pay, working time, rest periods, rest breaks, night work, annual leave and public holidays) compared to workers employed directly by the undertaking to which they are providing their services. This is part of an EU-wide initiative to protect atypical employees, in a similar fashion to the legislation on part-time and fixed term workers, though it does not provide the same level of protection. “Pay” for these purposes is defined as basic pay and pay in respect of shift work, piece work, overtime, unsocial hours and Sunday work. It expressly excludes sick pay, payments under a pension scheme or other occupational schemes.





3 Rights Arising During Employment

Employment Equality

Under the **Employment Equality Acts 1998-2015** (“**EEA**”), discrimination in relation to any of the following nine grounds is prohibited: gender, civil status, family status, sexual orientation, religious belief, age, disability, race (includes colour, nationality or ethnic or national origins) and membership of the Traveller community. Some of these grounds will also be covered in other EU member states under broader EU wide equality directives, so international employers with operations in other EU locations may already be familiar with some of these issues.

Discrimination is defined as the treatment of one person in a less favourable manner than another person in a comparable situation, on any of the nine grounds specified above. It may be direct or indirect, the main difference being that indirect discrimination is only permissible if objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Indirect discrimination is broadly comparable to the US concept of disparate impact discrimination.

Discrimination is prohibited not just in relation to conditions of employment, training, promotion and dismissal, but also in relation to access to employment (ie, the recruitment process), advertising, services of employment agencies, vocational training and membership of trade organisations and professional bodies. The Act provides for implied entitlements in contracts of employment to equal pay (except for pensions) and equal terms and conditions of employment.

Employers are liable for their employees’ acts, including acts of discrimination, whether or not that act was done with the employer’s knowledge or approval, provided the act was committed in the course of employment. It is a defense for an employer to prove it took such steps as were reasonably practicable to prevent the employee from carrying out such acts in the course of employment. Where an employee is harassed because he or she belongs to one of the nine protected groups, the employer is liable for the acts of the harasser, unless the employer has taken reasonable steps to prevent harassment of the employee or to reverse its effects. Furthermore, an employer may also be liable for the actions of a client, customer or other person with whom the employer might reasonably expect the employee to come into contact with in the course of his or her employment.

There are special provisions in relation to disabled persons. An employer is required to do what is reasonable to accommodate the needs of a person who has a disability, unless such measures would impose a “disproportionate burden” on the employer, taking into account financial and other costs, the scale and financial resources of the business, and the possibility of obtaining public funding or other assistance.

Paid Leave

Under the **Organisation of Working Time Act 1997** (“**OWTA**”), an employee who works in excess of 1,365 hours in a leave year is entitled to:

- (a) four working weeks’ paid annual leave; or
- (b) one third of a working week for each month in which the employee worked at least 117 hours; or
- (c) 8% of the hours worked in a leave year, subject to a maximum of four working weeks.

Employees who are on maternity leave or health and safety leave are deemed to be in employment while on such leave, and are therefore entitled to their entire annual leave entitlement. Employers may of course provide more than the statutory minimum annual leave, and most international employers operating in Ireland provide up to 25 days annual leave, based on the particular employee’s service.

Employees are also entitled to nine further paid leave days for public holidays.

Minimum Wage

The **National Minimum Wage Act 2000 and 2015** applies to persons of any age who work under a contract of employment and includes part-time employees. The national minimum wage is now fixed at €9.15 per hour (with some limited exceptions - see below).

Any contractual provision which provides for less favourable pay than that to which an employee is entitled under the Act is automatically modified to the extent necessary to comply with the Act.

All employees covered by the Act who are over the age of 18 are entitled to the minimum hourly rate of pay, unless they fall into a category to which a sub-minimum hourly rate of pay applies. Sub-minimum rates apply to employees under the age of 18, job entrants who enter employment for the first time after reaching the age of 18 and trainees, to whom a reduced rate of the national minimum hourly rate applies.

For the purposes of calculating pay, an employer may include basic salary, shift premium, service charge distributed through the payroll, monetary value of board and lodgings, payments under section 18 of the OWTA regarding zero hours protection, piece and incentive rates, commission and bonuses that are productivity-related. However, payments such as overtime premia, callout premia, public holiday premium, Saturday and Sunday premium and any payment-in-kind or benefit-in-kind will not constitute reckonable pay for the purposes of the Act.

Wage Information / Payslips

Under the **Payment of Wages Act 1991** employees are entitled to a written statement showing the gross wages payable and the nature and amount of deductions. Deductions may only be made where appropriately authorised, either by statute, by contract, or with the consent of the employee. Salaried employees are typically paid on a monthly basis while hourly rate workers are generally paid on a weekly basis.

Working Time

The maximum average hours that an employee may work is 48 hours per week, not including rest or lunch breaks. The average is generally worked out over a four-month reference period. Employees are entitled to rest periods of at least 11 consecutive hours in every 24-hour period, and must have at least one weekly rest period of 24 consecutive hours. This rest period must include a Sunday unless the employer specifically provides otherwise in the contract of employment. Sunday workers are normally entitled to receive additional pay. There are also specific rules governing night workers.

There are very limited exceptions to the rules on working time, the most notable of which relating to the limited cohort of employees who are responsible for determining their own working time. There is no general entitlement for employees to “opt-out” of working time restrictions, and employers owe an obligation to keep and retain working time records.

Maternity Leave

The **Maternity Protection Acts 1994 and 2004** give all female employees a basic entitlement to take maternity leave of 26 consecutive weeks, regardless of their length of service. There is no obligation on an employer to pay an employee on maternity leave. The employee may, however, be entitled to social welfare payments, provided she has accrued sufficient pay-related social insurance contributions.

An employee is also entitled to 16 additional weeks of unpaid maternity leave. This additional leave carries no entitlement to social welfare payments. An employee must give four weeks’ notice in writing to the employer of her intention to take maternity leave. Employees are also entitled to paid time off during working hours for pre and postnatal medical appointments.

Notice of termination of employment given during maternity leave is void. An employee has a right to return to the same job which she held prior to going on maternity leave. If this is not reasonably practicable, the employer must provide suitable alternative work.

Adoptive Leave

An adopting mother or sole adopting father is entitled to 24 weeks’ adoptive leave. Employees availing of this leave may be entitled to receive social welfare payments provided sufficient social insurance contributions have been paid. Employees are also entitled to additional unpaid adoptive leave for a further 16 weeks. No social welfare payments are payable in respect of that period. As with maternity leave, on return to work the employee has a right to the job held by him / her prior to availing of adoptive leave, or to suitable alternative work if this is not reasonably practicable.

Adopting parents are entitled to paid time off work to attend preparation classes and pre-adoption meetings with social workers required during the pre-adoption process.

Paternity Leave

With effect from 1 September 2016, employees who are fathers, or partners in same sex relationships who have newly adopted a child, are statutorily entitled to take 2 consecutive weeks’ paternity leave. Such leave must be taken in a single block within 26 weeks of the date of birth of the child (or the date of placement in the case of adoption).

There is no obligation on an employer to pay an employee on paternity leave. The employee may, however, be entitled to social welfare payments, provided that the relevant employee has accrued sufficient pay-related social insurance contributions. As with maternity leave, on return to work the employee has a right to the job held by him / her prior to availing of adoptive leave, or to suitable alternative work if this is not reasonably practicable.

Health and Safety Leave

This applies to pregnant employees, employees who have recently given birth, and employees who are breastfeeding. The employer must carry out a risk assessment on the health and safety of employees who are pregnant, have recently given birth or are breast-feeding. If this reveals a risk, and it is not possible to adopt preventative measures, then the working hours or conditions should be adjusted or the employee should be provided with other suitable work. If none of these options are feasible, the employee is entitled to health and safety leave, which will be paid for the first 21 days. Thereafter, the employee may be entitled to receive social welfare payments.

Parental Leave

Parents are entitled to 18 weeks’ parental leave in respect of a natural child, adopted child or child in respect of whom the employee acts in loco parentis. This leave must be taken before the child reaches eight years of age. This upper age limit can be extended in certain circumstances, where an adopted child is involved. In the case of a child with a disability, leave may be taken up to the child reaching 16 years of age. Both the father and the mother may take parental leave. There is no obligation on the employer to pay the employee during parental leave, nor is there any entitlement to social welfare payments during this time.

An employee is entitled to return to work at the end of a period of parental leave on the same terms and conditions held prior to availing of parental leave or, if this is not reasonably practicable, to suitable alternative employment.

An employee has a right to request changes to his or her working hours or patterns for a set period of time following his or her return from parental leave. The request must be made in writing no later than six weeks before the commencement of the proposed set period. An employer must consider the request but is not obliged to grant the requested changes.

Force Majeure Leave

An employee may leave work when his or her immediate presence is indispensable due to the injury or illness of certain close relatives, including a person with whom the employee is in a relationship of domestic dependency. A person residing with the employee is taken to be in a relationship of domestic dependency with the employee if, in the event of injury or illness, one reasonably relies on the other to make arrangements for the provision of care and includes same sex partners. Such leave is subject to a maximum of three days in any one year or five days in any three-year period and is paid for by the employer.

Carer's Leave

Employees are entitled to leave from their job for a period of 104 weeks in order to care for someone in need of full-time care and attention. An employee on carer's leave may also, on one occasion only, apply to extend their leave for a further 104 weeks where two beneficiaries of care are residing together. Carers are not entitled to be paid by employers while on carer's leave, but will have their jobs kept open for them for the duration of the leave.

Employees must have 12 months' continuous service with an employer in order to be eligible to apply for carer's leave. An employee may not be dismissed because he / she avails of carer's leave. A period of carer's leave will be reckonable for the purposes of all employment rights other than remuneration, superannuation benefits, annual leave (after the first 13 weeks' carer's leave) and public holidays (occurring after an employee's first 13 weeks' carer's leave).

Sick Pay

An employer is not obliged to provide sick pay, though in certain circumstances a right to sick pay may be implied even where not expressly provided for in the contract of employment. If a sick-pay scheme is in place, all employees, including fixed-term and part-time workers, must be given details of the scheme. Employees have rights under social welfare legislation to occupational sickness benefit from the State. Most large international employers operating in Ireland pay some form of sick pay, which can range from one week up to six months in some cases.

Whistleblower Protections

The **Protected Disclosures Act 2014** ("PDA") provides protection to employees who make "protected disclosures" across all sectors, including employees (public and private sector), contractors, trainees, agency staff, former employees and job seekers. An employee is protected from penalisation, or indeed threatened penalisation when making a protected disclosure. An employee is also protected in relation to disclosures made prior to the enactment of the PDA (which came into force on 15 July 2014).

An employee may bring a claim for unfair dismissal if they believe they have been dismissed by reason of making a protected disclosure, and they can be awarded up to five years' gross remuneration. The legislation also allows for interim injunctive relief to be granted by the Circuit Court, where appropriate, whilst waiting for the matter to be heard before the WRC.

Health and Safety

Under the **Safety, Health and Welfare at Work Act 2005 to 2014** employers have a general duty to provide for the safety, health and welfare of their employees. This includes the obligation to provide:

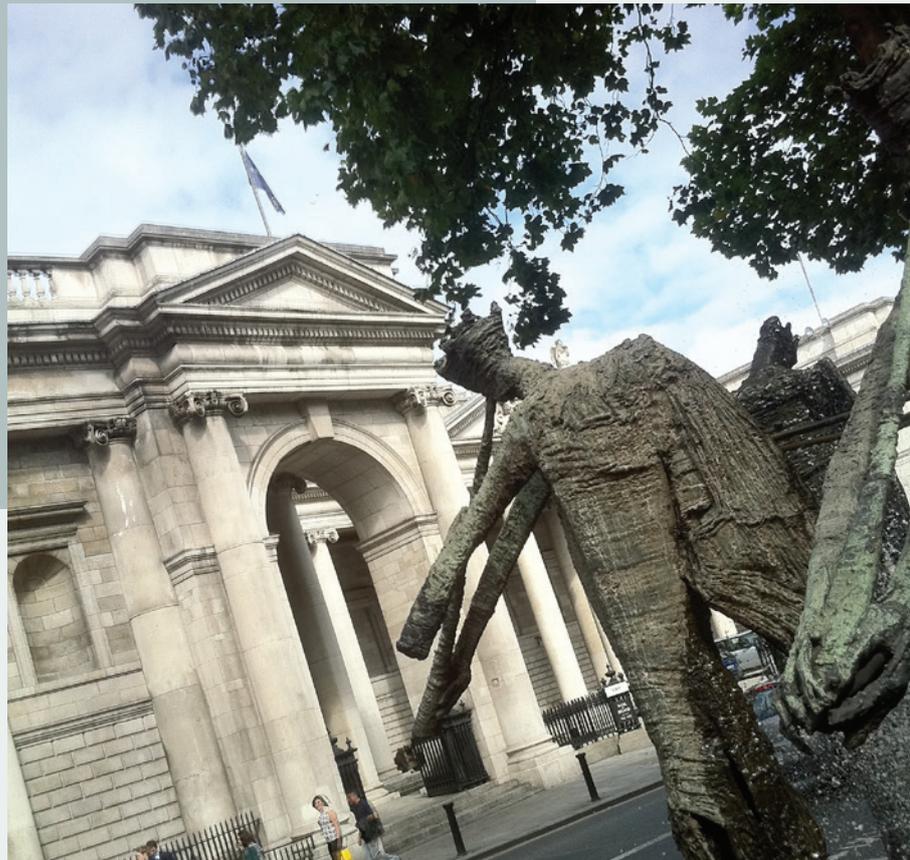
- a workplace that is safe, so far as reasonably practicable;
- safe means of access to and from the work place;
- safe plant and machinery;
- systems of work that are planned, organised, performed and maintained in a safe manner;
- information, instruction, training and supervision as is necessary to ensure safety and health at work;
- suitable protective clothing or equipment, where it is not reasonably practicable for an employer to eliminate hazards;
- adequate plans to be followed in an emergency or serious and imminent danger;
- facilities for the welfare of employees at work; and
- a competent person charged with the responsibility of ensuring the safety and health of employees.

The above list is not exhaustive.

Employers must prepare a safety statement. This is a general report by the employer setting out how it intends to secure the health, safety and welfare of its employees in its own particular work place and is based on the hazards identified in a risk assessment carried out by the employer. The information which must be included in the safety statement includes the arrangements made regarding the appointment of safety representatives and consultation with, and participation by, employees and safety representatives and the names of the persons charged with maintaining safety, health and welfare at work.

Employers must also consult with employees on health, safety and welfare issues, and the employees may select a safety representative. An employer also has a general common law duty to an employee to take reasonable care for his or her safety.

In addition, the **Safety, Health and Welfare at Work (General Application) Regulations 2007** apply to all workplaces, placing obligations on all employees, employers and visitors in the workplace. The Regulations cover various aspects of the workplace, including the use of electricity and workplace equipment, personal protection and lifting equipment, and working at heights, as well as incorporation of regulations on noise and vibrations. Health and safety compliance is regulated by the Health and Safety Authority, which performs a broadly similar statutory function to the US Occupational Safety and Health Administration or the UK Health and Safety Executive.



4 Rights Arising on Termination of Employment

Notice

Where either an employee or an employer wishes to end a contract of employment, minimum periods of notice apply where there has been continuous service of at least 13 weeks. Notice periods to be given by an employer depend on the employee's length of service, varying as follows:

Length of Service	Minimum Notice
13 weeks to two years	One week
Two to five years	Two weeks
Five to ten years	Four weeks
Ten to 15 years	Six weeks
More than 15 years	Eight weeks

Employees, on the other hand, are only obliged to give one week's notice, irrespective of their length of service.

These are, of course, only the minimum periods. A contract of employment may specify a longer notice period on either side, and it generally does with notice periods typically ranging from one month to six months depending on the seniority of the role. An employee may waive his or her right to notice and accept payment in lieu of notice. If there is no provision in an employment contract to make payment in lieu of notice, or to place the relevant employee on "garden leave" (see below), the employee is entitled to work out his / her notice period.

Post-Termination Restrictions

The default position under Irish law is that post termination restrictions (eg, non-compete, non-solicitation clauses, etc) are void as restraint of trade, unless the employer can demonstrate that it has a legitimate interest to protect; that the covenant goes no further than is reasonably necessary to protect that interest; and that it is not contrary to the public interest.

As such, US-style global covenants imposing a two-year restriction solely based on an employment relationship are unlikely to be enforceable in almost all cases. International employers operating in Ireland will therefore typically tailor their covenants to match the individual employee, his or her relevant territory and area of activity, and usually do not go beyond six months, or in very sensitive or senior roles, 12 months.

An employer may also insert what is known as a "garden leave" clause into employment contracts. This means that where an employee has given notice and his or her notice period has not yet expired, the employer can insist on the employee remaining at home on paid leave while his or her notice period runs its course. Thus, where the employee is resigning in order to join a competitor, or to set up a competing business, it ensures that the restrictions in his or her contract (i.e, concerning confidential information, fidelity etc.) remain in place, as the employee is still in employment.

Information on Dismissals

The **Unfair Dismissals Acts 1977 – 2015** ("UDA") require an employer, within 28 days of entering into the contract of employment, to inform an employee of the procedure that will be followed if the employee is going to be dismissed. This will usually be satisfied by issuing a copy of the employer's disciplinary procedure. The employer must also, if requested, confirm to the employee in writing, within 14 days of the request, the reasons why the employee was dismissed.

Dismissal

The key difference for US employers operating in Ireland on dismissal is the fact that termination at will is not permitted, and generally the employer must be able to establish a fair reason for dismissal and also show that it followed a fair process in order to legitimately defend a dismissal.

(a) Wrongful Dismissal

An employer can, at common law, terminate the employment contract without cause, provided this is done in accordance with both its express and implied terms. However, if a term of the contract is breached in purporting to terminate an individual's employment (typically the notice provision or the implied right to fair procedures), this can give rise to a claim for damages at common law.

This is known as a wrongful dismissal claim, which is progressed in the civil courts, and which is also typically accompanied by a claim for injunctive relief to restrain the dismissal from proceeding (see Part 6 – "Enforcement of Employment Law Rights").

(b) Unfair Dismissal

Notwithstanding any express contractual right to terminate, employees are afforded statutory protection against unfair or discriminatory dismissal. Subject to certain exceptions, where an employee has one year's continuous service, he / she is eligible to bring a claim for unfair dismissal under the UDA. In order for an employer to defend a claim under the UDA, the employer must show that:

- the reason for the dismissal was because of the capability, competence or qualifications of the employee, the conduct of the employee, redundancy, the employment being prohibited by statute, or because there were other substantial grounds justifying the dismissal - ie, that the dismissal was for a potentially fair reason; and

- it followed a fair and reasonable process or procedure in effecting the termination - (eg, warnings must be given; the employee must be heard; and a fair and proper investigation into the circumstances leading to the dismissal must be carried out).

Statutory employment law claims, including unfair dismissal claims, are heard by the Workplace Relations Commission (the “WRC”) and on appeal by the Labour Court (see Part 6 – “Enforcement of Employment Law Rights”).

Where an employee succeeds with a claim for unfair dismissal, the WRC may award reinstatement, reengagement or damages of up to two years’ gross remuneration. Compensation is the most common award. Damages are calculated on actual and projected future loss only, and an employee is required to mitigate his / her loss by making efforts to secure alternative employment. As a consequence, therefore, few cases result in the maximum award.

(c) Discriminatory Dismissal

Employees who have been dismissed on grounds of any one of the nine discriminatory grounds set out in the EEA (ie, gender, civil status, family status, sexual orientation, religion, age, disability, race and / or membership of the Traveller Community) may bring a claim of discriminatory dismissal.

The remedies available to employees are broadly similar to those under the UDA and include compensation, re-engagement or re-instatement. However, for equality claims, there is no minimum length of service requirement and compensation awards, while generally subject to a cap of two years’ gross remuneration, are not confined to actual loss and there is no obligation to mitigate one’s loss.

(d) Whistleblowing

Employees may also potentially bring a claim under whistleblowing legislation if they believe that they have been terminated on the basis of having made a protected disclosure. In common with equality claims, there is no minimum length of service requirement to bring a whistleblowing claim. Employees may also make an application for interim relief restraining their dismissal pending the outcome of a hearing of a whistleblowing claim.

If successful, an employee who has been selected for redundancy on grounds of having made a protected disclosure can be awarded re-instatement, re-engagement or compensation of up to five years’ remuneration.

Redundancy

An employee is entitled to redundancy payments where he or she has worked continuously for two years or more for an employer and is either dismissed by reason of redundancy or in specified circumstances, is laid off or kept on short time.

The statutory redundancy amount is currently two weeks’ pay for each year of service, plus one extra week’s pay. A week’s pay for these purposes is currently subject to a ceiling of €600 a week. It is commonplace for employers to pay employees an ex-gratia payment, in addition to the statutory redundancy lump sum payment, upon termination of employment by reason of redundancy in exchange for the employees signing a compromise agreement that waives all employment law claims against his / her employer.

Redundancy is a potentially fair reason for dismissal for the purposes of the UDA, and so can offer a defence to an unfair dismissal claim. However, in order for this defence to succeed, it is incumbent on the relevant employer to demonstrate that there was a genuine redundancy situation (ie, it falls within the definition of redundancy for the purposes of the **Redundancy Payments Acts 1967 to 2015**) and a fair redundancy process was applied.

Mandatory information and consultation obligations with employees and / or their representatives, together with particular notification requirements, can be triggered in circumstances more than a specified number of redundancies are proposed to take place over a 30 days period – ie, where collective redundancies are proposed. The number of redundancies that triggers this obligation to inform and consult depends on the size of the relevant establishment (see Part 5 – “Collective Rights”).

Where collective redundancies are carried out on a compulsory basis, and the employees who are made redundant are replaced by employees who are carrying out essentially the same functions but under materially inferior terms and conditions of employment, then an employer may face liability for compensation payments of up to five years’ gross remuneration in respect of each affected employee and / or fines on indictment of up to €250,000. These are known as exceptional collective redundancies for the purposes of the **Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007**.



5 Collective Rights

Trade Union Recognition

Unlike North America, and almost all other parts of Europe, employers cannot be required to recognise a trade union under Irish law, unless taking over a business that already recognises a trade union. While an employee is entitled to join a trade union, the employer does not face a corresponding obligation to recognise or to negotiate with any such trade union in relation to the employees' terms and conditions of employment. Trade union membership amongst the international employer sector in Ireland is particularly low, particularly in the ICT and pharma sectors, so these issues are unlikely to arise for most foreign employers. Employers do need to take care, however, not to unintentionally recognise a trade union or create collective bargaining arrangements by negotiating with a trade union in relation to employees' terms and conditions.

More generally, the industrial relations environment is regulated by the **Industrial Relations Acts 1946 – 2015**. The system is predominantly a voluntarist system in which management and trade unions must generally both agree to engage. There is no obligation on employers to engage in collective bargaining. However, the **Industrial Relations (Amendment) Act 2015** does widen the situations in which trade unions may seek binding determination from the Labour Court in relation to trade disputes on behalf of employees when an employer does not engage in collective bargaining.

Works Councils

Works councils are not a significant feature of the Irish industrial relations landscape, unlike other EU countries such as France and Germany where they can play a significant part in day to day operational management and decision making. While Irish law does include specific provision for the establishment of both European and local level works councils, in practice, they are extremely rare.

Under the **Transnational Information and Consultation Act 1996**, an employer can be required to establish a European works council if it is a community scale undertaking or group (as defined) with 150 employees or more in two or more EU member states. The fact that the headquarters or parent entity may be US based will not put the employer beyond the scope of the legislation. Similarly, under the **Employees (Provision of Information and Consultation) Act 2006**, an employer can be required to establish a local works council, where the employer has 50 or more employees. In both cases, the general rule is that the legislation will only be triggered on a request made by certain minimum numbers of employees.

Mandatory Information and Consultation Obligations

(a) Collective Redundancies

The **Protection of Employment Acts 1988 – 2014** (the "PEA") provide that a collective redundancy occurs when a certain number of employees in an establishment are dismissed on grounds of redundancy within a 30 day consecutive period. The statutory numbers required below vary depending on the size of the workforce. The PEA do not apply to an establishment that normally employs 20 or less employees.

Total Workforce in the Relevant Establishment	Threshold Number of Redundancies
21-49	five or more
50-99	ten or more
100-299	10% of establishment workforce or more
300 or more	30 or more

Employers are statutorily obliged to initiate consultation at the earliest opportunity, and in any event, at least 30 days before the first notice of dismissal is given. Where an employer effects collective redundancies, the employer must, with a view to reaching agreement, initiate consultations with employees' representatives in relation to matters such as, the possibility of avoiding or reducing the proposed redundancies and the basis on which it will be decided which particular employees will be made redundant. If there is no trade union in place, an employer must put in place an election mechanism for employees to have the opportunity to nominate employee representatives.

The PEA requires employers to provide employee representatives and the Minister with certain written information eg, the proposed number of redundancies, the number and description of employees it proposes to make redundant etc. The Minister for Jobs, Enterprise and Innovation must also be notified of the proposals at least 30 days in advance of the first notice of redundancy being given.

(b) Transfer of Undertakings

The European Communities (**Protection of Employees on Transfer of Undertakings) Regulations 2003** (the "TUPE Regulations") apply to any transfer of an undertaking, business (or parts thereof) from one employer (transferor) to another employer (transferee) as a result of a legal transfer or merger. A transfer is defined as the "transfer of an economic entity which retains its identity". Under the TUPE Regulations, all rights and obligations arising from contracts of employment (except for certain pension rights), as well as any rights under collective agreements, are automatically transferred from the transferor to the transferee in the event of a transfer.

Both the transferor and the transferee are obliged to inform employee representatives affected by the transfer of certain information. This information must be given to the employees' representatives where reasonably practicable, not later than 30 days before the transfer is carried out.

Where there are any measures envisaged in relation to the employees, consultation must take place, in relation to any such measures, with a view to reaching an agreement. The time frame for commencement of such consultation period is, again, where reasonably practicable, not later than 30 days before the transfer is carried out.



6 Enforcement of Employment Law Rights

Statutory Claims

The **Workplace Relations Act 2015 (“WRA”)** has reformed the enforcement of employment law rights in Ireland. The WRA came into effect on 1 October 2015. The Workplace Relations Commission (“**WRC**”) was established under the WRA. The WRC is now the body to which all workplace relations and statutory employment law complaints are made.

Complaints are made using a single complaints form which is available online. Generally complaints must be made within a period of six months from the date of contravention of the relevant statute (eg, the date of dismissal in an unfair dismissal case etc). However, this time limit may be extended by a further six months in circumstances and an adjudication officer where he /she is satisfied that the delay in submitting the complaint was due to reasonable cause. The Director General of the WRC may refer the complaint to a mediation officer if he / she is of the opinion that the complaint is capable of being resolved by mediation, and neither party to the claim objects to mediation. If the Director General is of the opinion that the dispute is not capable of being resolved by mediation, he / she shall refer the matter to an adjudication officer for hearing.

Decisions of an adjudication officer may be appealed to the Labour Court within 42 days. The Labour Court may refer a question of law to the High Court. A party may appeal a decision of an adjudication officer or the Labour Court to the High Court on a point of law only. The decision of the High Court is final.

Civil Claims

Claims for wrongful dismissal, breach of contract and gender discrimination may be instituted in the Circuit Court. Under the Protected Disclosures Act 2014, an employee can apply to the Circuit Court to prevent dismissal where he / she is threatened with dismissal for having made a protected disclosure.

An employee may also make an application to the High Court for an injunction restraining dismissal or to prevent the application of unfair procedures during a disciplinary process. An injunction is an order which restrains the person against whom it is made from executing a specified act (eg, a dismissal) or which requires that person to implement a specified act (eg, retaining an individual in employment), pending the outcome of the overarching breach of contract claim. As an injunction is an equitable remedy, the particular circumstances under which an injunction may be granted will vary on a case-by-case basis. However, in general terms, an injunction of this nature may be granted where:

- there is a serious question to be tried;
- damages would not be an adequate remedy; and
- the balance of convenience favours the granting of the injunction.

Generally, where an injunction is granted, it typically includes an order to maintain salary pending trial (which could be nine to twelve months away) and the outcome of the trial may be that an employee is reinstated into his / her role.

Workplace Inspections

The Workplace Relations Commission has taken over the role of the National Employment Rights Authority, which is now referred to as the Inspection and Enforcement Service (“**IES**”). The purpose of this service is to monitor employment conditions to ensure compliance and enforcement of employment rights and equality legislation.

The IES has broad powers to carry out employment rights compliance inspections and to prosecute employers who are alleged to be in breach of employment laws. Where employment law breaches are found, depending on the nature of the relevant offence, an IES inspector may issue on-the-spot fines of up to €2,000 (a Fixed Payment Notice) or a Compliance Notice that compels an employer to rectify breaches of certain employment laws within a certain period or face prosecution.





7 Entitlement to Work in Ireland

Employment Permits

Any EEA national (ie, the EU plus Norway, Iceland and Liechtenstein) may work in Ireland without the need to first obtain the approval of the Department of Jobs, Enterprise and Innovation (the “**Department**”). In respect of non-EEA nationals, there are various means by which the individual may lawfully work in Ireland.

The four main categories of employment permit are:

- Critical Skills Employment Permit;
- General Employment Permit;
- Intra-Company Transfer Permit; and
- Dependent / Partner / Spouse Employment Permit.

An employment permit will not, generally, be issued where a consequence of granting the permit would be that more than 50% of the employees in a company would be non-EEA nationals (the “**50:50 Rule**”). IDA supported companies may potentially avail themselves of an exception whereby the 50:50 Rule is disapplied for the first two years’ of that company’s operation in Ireland.

(a) Critical Skills Employment Permit Scheme

The Critical Skills Employment Permit (“**CSEP**”) scheme is designed to attract highly skilled people into the labour market with the aim of encouraging them to take up permanent residence in the Ireland. The following are eligible for a CSEP:

- Occupations with a minimum annual remuneration of €30,000 for a restricted number of strategically important occupations contained in the Highly Skilled Eligible Occupations list. A relevant degree qualification or higher is generally required.
- All occupations with a minimum annual remuneration of over €60,000, other than those on the Ineligible Categories of Employment for Employment Permits list or which are contrary to the public interest.

CSEP’s are granted initially for a period of two years. Those who are granted CSEP’s are permitted to bring their spouses and families to join them immediately. There is now no formal renewal application process to the Department. Instead CSEP holders can secure a “stamp 4 protection” which allows them to reside and work in the State without the need for a further employment permit for two years, which is then renewable subject to the person meeting all relevant criteria as stated on the website of the Irish Naturalisation and Immigration Service (“**INIS**”).

(b) General Employment Permits

General Employment Permit (“**GEP**”) applications are made to the Department.

GEP’s are issued where there is a recognised labour shortage, and (save for exceptional circumstances) where the salary is above €30,000. The prospective GEP holder must possess the relevant qualifications, skills or experience that are required for the employment.

A General Employment Permit can be issued for an initial period of up to two years and can then be renewed for up to a further three years. After five years, the applicant may apply to the INIS for long term residency.

Unlike the CSEP scheme, in most cases, a labour market needs test must be undertaken for GEP’s in order to establish that the relevant role cannot be filled by an Irish / EEA national. This involves advertising the role in a specified manner for a minimum specified period.

Spouses, dependents or partners of a GEP holder are not eligible for a Dependent / Partner / Spouse Employment Permit and must apply for a separate employment permit in their own right.

It should also be noted that certain sectors are deemed “ineligible occupational sectors” and that work permits will not issue in respect of positions in those sectors. A list of such sectors is published by the Department on a regular basis.

(c) Intra-Company Transfer Employment Permit Scheme

The Intra-Company Transfer Employment Permit (“**ICT**”) scheme allows multi-national companies to transfer certain categories of staff between related companies in different countries, or to transfer them to Ireland on a temporary basis for training purposes.

This type of permit is only available for those with annual salaries above €40,000 (or €30,000 for trainees) and who can show that they fit into one of the following three categories:

- senior management;
- key personnel; or
- trainees.

The applicant must also have been employed by the sending company for at least six months (one month in the case of trainees). The main benefit of the ICT is that it facilitates the temporary assignment of corporate employee’s and allows them to stay on the foreign payroll.

As with the CSEP scheme, no labour market needs test is required in respect of ICT applications. These permits are issued for a period of two years initially, and may be extended for up to a further three years.

Employment Permits

(d) Dependent / Partner / Spouse Employment Permits

Dependent / Partner / Spouse Employment Permits (“DPSEP”) allow the dependents, civil partners, and spouses of certain categories of employment permit holders (ie, the primary permit holder) to apply for an employment permit to work in the Ireland. Dependents, civil partners, and spouses can apply (free of charge) for a permit in respect of all occupations, even those with a remuneration of less than €30,000 per annum (as long as minimum wage requirements are met). Prospective employers are not required to carry out a labour market needs test in this instance.

In order to obtain this type of permit, the primary permit holder must still be working within the terms of their employment permit. Certain categories of people are excluded from obtaining a DPSEP. This type of permit can only be issued for certain periods of time up to a maximum of two years, but this permit generally tends to be issued until the expiry of the employment permit of the primary permit holder.

Atypical Working Scheme

Ireland is unique and innovative among EU Member States in piloting a scheme that allows for short-term employment without requiring a formal employment permit.

The Atypical Working Scheme, which commenced in September 2013, applies to non-EEA nationals who, in certain circumstances, are required by an organisation based in the State to undertake short-term contract work (up to 90 days) where a skill shortage has been identified; to provide a specialised or high skill to an industry, business or academic institution; to facilitate trial employment in respect of an occupation on the Highly Skilled Occupations List; and to facilitate paid or funded short-term employment / internships where beneficial or necessary to the course being studied in respect of third level students studying outside the state in approved institutions.

Permit applications under the scheme are made to INIS rather than the Department, which processes the standard employment permits outlined above. There is currently no indication as to how long the scheme will run or whether it will be an indefinite programme.

Penalties

The **Employment Permits Acts 2003 to 2014** govern the grant of employment permits in respect of non-nationals and related matters and provide for fines of up to €250,000 or ten years imprisonment for employers who employ non-EEA nationals without employment permits.

Contacts

This guide provides an overview of Irish employment law for international employers operating in Ireland. Further information on other areas of Irish law relevant to international companies and financial institutions is available in the Insights section of the Matheson website, www.matheson.com.

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