



Employment law in the UK and Ireland: the notable differences

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As a result of the implementation of EU directives since the 1970s, UK employment law is similar to that in Ireland. However, there are some nuances and differences in specific areas which could trip up the unwary. This overview sets out the more notable differences between the two jurisdictions.

Status of employment

Generally, in both the UK and Ireland, legislative employment protections only apply to employees. However, the UK has provided for an additional classification in the sense that it recognises an individual can be an employee, a worker or an independent contractor. This additional status of worker provides certain protections to individuals who ordinarily would be classified as independent contractors in Ireland.

Basic employment provisions

- *Working time legislation:* Irish legislation does not permit employees to opt out of the 48-hour maximum working week, unlike their UK counterparts (there are some exceptions to this rule for specific categories of employee; for example, doctors).
- *Minimum notice periods:* statutory minimum notice periods are different. This is an important point to bear in mind for a cross-border employer, which should familiarise itself with the statutory notice periods that will apply at a minimum in the respective jurisdictions. For instance, the maximum statutory notice period in Ireland is eight weeks (after 15 years' service).

Benefits and entitlements

- *Protective leave:* while both jurisdictions provide statutory maternity, adoptive and parental leave, there is no statutory paternity leave in Ireland (although some employers provide a number of days at their contractual discretion). Further, there is no statutory obligation on employers in Ireland to pay an employee who takes any of the aforementioned periods of leave. Employees may qualify for maternity benefit and adoptive benefit from the Department of Social Protection.
- *Sick pay:* there is no common law or statutory requirement for an Irish employer to pay sick pay to an employee.

However, many employers do operate sick pay schemes and, if this is the case, the employer must furnish the employee with written details of the same. The position is somewhat different in the UK: in circumstances where relevant statutory requirements are met by an employee, an employer is obliged to pay statutory sick pay.

Termination of employment

- *Compromise agreements:* unlike the UK, there is no statutory recognition of compromise agreements in Ireland and, indeed, most of our employment legislation precludes employees from waiving their employment rights thereunder. However, in practice, these agreements are used on a regular basis and, subject to certain consideration, are contractually binding on employees. There is no requirement in Ireland for a solicitor to certify that appropriate legal advice has been given in respect of such an agreement, although it is common for Irish employers to advise employees to seek independent legal advice as a matter of best practice. Wording should also be included in such agreements to the effect that employees have been provided with the opportunity to do so, even if it has not been availed of.
- *Redundancy:* while Irish legislation provides a statutory procedure that should be followed in implementing collective redundancies, there is no statutory consultation procedure for individual redundancies. However, Irish employers are advised to ensure that the procedure whereby an individual is selected for redundancy is objective, fair and transparent, and to follow some sort of consultation process to avoid a claim under the Unfair Dismissals Acts 1977-2007. The collective redundancy regulations (the Protection of Employment Act 1977 as amended by the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007) are

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triggered when a certain number of employees will be dismissed by reason of redundancy over any period of 30 consecutive days. They are triggered where at least five employees in an establishment employing between 20 and 50 employees will be made redundant, or on an increasing scale but generally where approximately 10% of the workforce will be made redundant. The regulations require employers to notify the Minister for Jobs, Enterprise and Innovation and employee representatives, and commence consultation with the latter, at least 30 days prior to notice of dismissal being given to any employee.

- **Dismissal:** the UK and Ireland have similar statutory provisions on unfair dismissals in the workplace. However, one notable contrast is the difference in awards that can be made to an employee who is successful in an unfair dismissal claim. The compensation cap in Ireland is up to two years' gross remuneration (not just basic salary) representing actual financial loss only. Alternatively an employee may institute an action at common law and seek damages for wrongful dismissal or breach of contract, including an application to the High Court for an injunction to prevent dismissal. This is a costly exercise and carries risk (from a costs perspective) for employees and, as such, normally only arises in cases involving senior employees or executives. An injunction may be granted where the employer failed to comply with an agreed disciplinary procedure or failed to follow fair procedures, where damages would not be an adequate remedy and the balance of convenience favours the granting of an injunction.

Practice and procedure

There is no preliminary case management procedure in Ireland, nor are there strict procedural obligations for preparing a hearing before the Irish Employment Appeals Tribunal. This can be frustrating for UK clients with employees in Ireland, as in most cases very little detail about a claim is available before the date is set for hearing, which can be up to 18 months after a claim is lodged.

Reforms for the Irish employment adjudicatory bodies are proposed in the Workplace Relations Bill, which would see the current four bodies of first instance reduced to one single body to be known as the Workplace Relations Commission, with a right of appeal to the Irish labour court. This would result in an Irish employment appeal system more akin to the UK's current system.

Agency workers

The EU Directive on Temporary Agency Work 2008/104/EC was introduced in the UK and Ireland in October 2011 and

May 2012, respectively. While the basis of both jurisdictions' national legislation is similar, in providing equal treatment to agency workers, the time at which these rights begin to accrue differs. The 12-week service requirement does not exist in Ireland where agency workers are afforded equal treatment rights to access to collective facilities and information, and basic working and employment conditions from the start of their employment with the hirer.

Transfer of undertakings

Common obligations arise under the Acquired Rights Directive in both the UK and Ireland. However, there are some differences in the implementation of this directive.

Firstly, the test differs in terms of determining whether or not a transfer has occurred in each jurisdiction. In Ireland a change in service provider does not automatically result in an application of the Irish transfer regulations. The Irish courts/tribunals still have regard to the ECJ case *Süzen* in cases involving outsourcing.

Furthermore, a refusal to transfer is not automatically deemed to be a resignation. The current position in Ireland is governed by the High Court case *Symantec*, where it was held that a refusal by an employee to transfer on the same terms and conditions to effectively the same role (albeit with a new employer) did not give rise to a redundancy situation. In that case the refusal to transfer was deemed to be a resignation by the employee, but this case was decided on its specific facts, and has been appealed to the Supreme Court. As such, specific advice should be sought on a case-by-case basis.

Conclusion

The above comparative analysis shows some of the nuances that exist between employment laws, practices and procedures in Ireland and the UK. It demonstrates, at the very minimum, the importance of lawyers and clients seeking expert guidance when dealing with employment issues outside their home jurisdiction.

KEY:

<i>Süzen</i>	<i>Süzen v Zehnacker Gebäudereinigung GmbH</i> [1997] C-13/95
<i>Symantec</i>	<i>Symantec Ltd v Leddy and Lyons</i> IEHC 256