THE EMPLOYMENT LAW REVIEW

Tenth Edition

Editor
Erika C Collins

THE LAWREVIEWS

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CONTENTS

PREFACE

For the past nine years, we have surveyed milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. In updating the book this year, I reread the Preface that I wrote for the first edition in 2009. In that first edition, I noted that I believed that this type of book was long overdue because multinational corporations must understand and comply with the laws of the various jurisdictions in which they operate. I have been practising international employment law for more than 20 years, and I can say this holds especially true today, as the past 10 years have witnessed progressive shifts in the legal landscape in many jurisdictions. This tenth edition of *The Employment Law Review* is proof of the continuously growing importance of international employment law. It has given me great pride and pleasure to see this publication grow and develop to satisfy its initial purpose: to serve as a tool to help legal practitioners and human resources professionals identify issues that present challenges to their clients and companies. As the various editions of this book have highlighted, changes to the laws of many jurisdictions over the past several years emphasise why we continue to consolidate and review this text to provide readers with an up-to-date reference guide.

This year, we proudly introduce our newest general interest chapter, which focuses on the global implications of the #MeToo movement. The movement took a strong hold in the United States at the end of 2017, as it sought to empower victims of sexual harassment and assault to share their stories on social media in order to bring awareness to the prevalence of this issue in the workplace. In this new chapter, we look at the movement's success in other countries and analyse how different cultures and legal landscapes impact the success of the movement (or lack thereof) in a particular jurisdiction. To that end, this chapter analyses the responses to and effects of the #MeToo movement in several nations and concludes with advice to multinational employers.

Our chapter on cross-border M&A continues to track the variety of employment-related issues that arise during these transactions. After a brief decline following the global financial crisis, mergers and acquisitions remain active. This chapter, along with the relevant country-specific chapters, will aid practitioners and human resources professionals who conduct due diligence and provide other employment-related support in connection with cross-border corporate M&A deals.

Global diversity and inclusion initiatives remained a significant issue in 2018 in nations across the globe, and this is one of our general interest chapters. In 2018, many countries in Asia and Europe, as well as South America, enhanced their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation as well as gender quotas and pay equity regulations to ensure that all employees, regardless of gender, sexual orientation or gender identity, among other

factors, are empowered and protected in the workplace. Unfortunately, there are still many countries where certain classes of individuals remain under-protected and under-represented in the workforce, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

We continue to include a chapter focused on social media and mobile device management policies. Mobile devices and social media have a prominent role in, and impact on, both employee recruitment efforts and the interplay between an employer's interest in protecting its business and an employee's right to privacy. Because companies continue to implement 'bring-your-own-device' programmes, this chapter emphasises the issues that multinational employers must contemplate prior to unveiling such a policy. Bring-your-own-device issues remain at the forefront of employment law as more and more jurisdictions pass, or consider passing, privacy legislation that places significant restrictions on the processing of employees' personal data. This chapter both addresses practice pointers that employers must bear in mind when monitoring employees' use of social media at work and provides advance planning processes to consider prior to making an employment decision based on information found on social media.

Our final general interest chapter discusses the interplay between religion and employment law. Religion has a significant status in societies throughout the world, and this chapter not only underscores how the workplace is affected by religious beliefs, but also examines how the legal environment has adapted to such beliefs. The chapter explores how several nations manage and integrate religion in the workplace, in particular by examining headscarf bans and religious discrimination.

In addition to these five general interest chapters, this edition of *The Employment Law Review* includes 45 country-specific chapters that detail the legal environment and developments of certain international jurisdictions. This edition has once again been the product of excellent collaboration, and I wish to thank our publisher. I also wish to thank all our contributors and my associate, Vanessa P Avello, for her invaluable efforts to bring this tenth edition to fruition.

Erika C Collins
Proskauer Rose LLP
New York
February 2019

Chapter 23

IRELAND

Bryan Dunne and Alice Duffy[1]

I INTRODUCTION

Employment in Ireland is regulated by an extensive statutory framework, much of which finds its origin in European Community law. The Irish Constitution, the law of equity and the common law remain relevant, particularly in relation to applications for injunctions to restrain dismissals and actions for breach of contract. The main legislation in the employment law area includes:

a the Industrial Relations Acts 1946–2015;
b the Redundancy Payments Acts 1967–2014;
c the Protection of Employment Act 1977–2014;
d the Minimum Notice and Terms of Employment Acts 1973–2005;
e the Unfair Dismissals Acts 1977–2015;
f the Data Protection Act 2018;
g the Payment of Wages Act 1991;
h the Terms of Employment (Information) Acts 1994 and 2014;
i the Maternity Protection Acts 1994 and 2004;
j the Adoptive Leave Acts 1995–2005;
k the Organisation of Working Time Act 1997;
l the Employment Equality Acts 1998–2015;
m the Parental Leave Acts 1998–2006;
n the National Minimum Wage Act 2000–2015;
o the Protection of Employees (Part-Time Work) Act 2001;
p the Carer's Leave Act 2001 (as amended);
q the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003;
r the Protection of Employees (Fixed-Term Work) Act 2003;
s the Safety, Health and Welfare at Work Act 2005–2014;
t the Employees (Provision of Information and Consultation) Act 2006;
u the Employment Permits Acts 2003–2014;
v the Safety, Health and Welfare at Work (General Application) Regulations 2007;
w the Protection of Employees (Temporary Agency Work) Act 2012;
x the Protected Disclosures Act 2014;
y the Workplace Relations Act 2015; and
z the Paternity Leave and Benefit Act 2016.

1 Bryan Dunne is a partner and Alice Duffy is a senior associate at Matheson.

Employment rights under Irish law can be enforced under the specially allocated statutory forum (the Workplace Relations Commission), or by the civil courts in appropriate cases. The process of determining which body or court will have jurisdiction in a particular case will now mainly depend on whether the claim is being brought under either statute or common law.

In general terms, employers' liability (i.e., personal injury) claims and claims of breach of contract are dealt with in the civil courts, as are applications for injunctive relief in relation to employment matters, whereas statutory claims (those made, for example, under the Unfair Dismissals Acts 1977–2015 or the Organisation of Working Time Act 1997) are heard by the Workplace Relations Commission (or on appeal to the Labour Court).

i Civil courts

The civil judicial system in Ireland is tiered, based on the monetary value of particular claims. At the lowest level, the District Court deals with claims not exceeding €15,000 and this court rarely hears employment-related disputes. At the next level is the Circuit Court, where jurisdiction is generally limited to awards of up to €75,000 (except for personal injury actions when the jurisdiction is limited to €60,000), although where a case has been appealed to the Circuit Court from the Employment Appeals Tribunal (EAT) in relation to any remaining legacy cases under the old system (see subsection ii), it has jurisdiction to exceed this limit and make awards up to the jurisdictional level of the EAT. There is no longer a right of appeal to the Circuit Court under the new Workplace Relations system for all cases issued on or after 1 October 2015. The Circuit Court also has potentially unlimited jurisdiction in relation to gender equality cases. Where the sums involved in a contractual claim exceed €75,000, the action must be brought in the High Court, which has unlimited jurisdiction. Only the Circuit and High Courts can hear applications for injunctive relief.

ii The Workplace Relations Commission

The Workplace Relations Commission (WRC) is an independent statutory body established on 1 October 2015 following the Workplace Relations Act 2015 (the 2015 Act). The WRC took over the functions of the National Employment Rights Authority (NERA), the Labour Relations Commission, the Equality Tribunal and the first-instance (complaints and referrals) function of the EAT. The WRC is the sole body to which all industrial relation disputes and complaints in accordance with employment legislation will be presented. All claims issued prior to 1 October 2015 before any of the relevant bodies will be dealt with under the old system, until they have fully concluded.

Following the 2015 Act, the WRC provides conciliation, advisory, mediation and early resolution services, as well as an adjudication service. The adjudication service, which was formerly the Rights Commissioner service, investigates disputes, grievances and claims made under the relevant employment legislation. A complaint may also be referred to mediation if deemed suitable; otherwise, it will go before an adjudicator. The WRC also has discretion to deal with the complaint by written submission only, unless either party objects within 42 days of being informed.

A major difference compared to the old system is that all WRC hearings are held in private. The employer has 56 days from the date of the decision to implement it, and should they fail to do so the employee may apply to the District Court for an order directing the employer to fulfil the order. If the decision relates to the Unfair Dismissals Acts 1997–2015 (UDA), and the decision was to reinstate or re-engage the employee, the District Court may substitute an order to pay compensation of up to 104 weeks' pay, in accordance with the UDA.

As mentioned, the WRC also took over the role of NERA, which is now referred to as the Inspection and Enforcement Service. The purpose of this service is to monitor employment conditions to ensure compliance and enforcement of employment rights legislation.

iii Labour Court

As of 1 October 2015, the Labour Court is the single appeal body for all workplace relation disputes. The EAT will continue to hear all appeals submitted prior to the commencement of the 2015 Act (there are hearings scheduled for 2019). It is intended that the EAT will be wound up once all of the legacy cases have been heard.

The Labour Court can choose to deal with the dispute by written submissions only, unless either party objects. Unlike the WRC, all hearings before the Labour Court are held in public, unless it decides, owing to special circumstances, that the matter should be heard in private. The Labour Court has wide powers under the new legislation to require witnesses to attend and to take evidence on oath.

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

II YEAR IN REVIEW

The Irish economy is continuing to grow. The Economic and Social Research Institute has forecasted economic growth of 2.9 per cent in 2019, even if there is a hard Brexit. There has also been a drop in the unemployment rate in Ireland, decreasing to 5.3 per cent in November 2018 from 7 per cent in January 2017.

The EU General Data Protection Regulation (GDPR) came into effect in Ireland in May 2018. The GDPR extends current obligations previously in place pursuant to data protection legislation. For example, individuals are granted greater rights in respect of access to their personal data, data erasure (the 'right to be forgotten'), their ability to have inaccurate data rectified, their ability to restrict the processing of their personal data and their ability to object to its processing altogether (this should be on compelling legitimate grounds). In addition, data subject access requests no longer need to be in writing and are no longer subject to a fee.

Immigration to Ireland has also steadily increased, with over 11,000 employment permits issued in the 2017 calendar year. There have also been several changes to the Irish immigration system, including the replacement of the Garda National Immigration Bureau card with the Irish Residence Permit card in December 2017, to bring Ireland into line with residence permits throughout the European Union. As of May 2018, certain categories of animators are considered highly skilled for the purposes of employment permits, and there is no longer any category of employment considered ineligible for Intra-Company Transfer Employment Permits.

III SIGNIFICANT CASES

i Investigations and fair procedures

Iarnród Éireann/Irish Rail v. Barry McKelvey[2]

The High Court decision in *Lyons v. Longford Westmeath Education and Training Board*[3] was arguably the most controversial employment law case of 2017, not least because the High Court appeared to suggest that an employee is entitled to legal representation as part of fair procedures in all disciplinary processes, but also because the position was at odds with the previous Supreme Court decision of *Burns and another v. The Governor of Castlerea Prison*,[4] which was considered as the guiding authority in respect of this issue. Burns held that an employee may be entitled to legal representation in disciplinary hearings but that this right would only arise in 'exceptional' circumstances.

The Court of Appeal decision by Ms Justice Irvine in *Iarnród Éireann/Irish Rail v. Barry McKelvey*[5] has now clarified the position in respect of legal representation at a disciplinary hearing. This case arose from a disciplinary process where the employer alleged that the employee, Mr McKelvey, had committed theft by the misuse of fuel cards causing financial loss to the employer. Mr McKelvey requested that he be allowed to be represented by a solicitor and counsel at the disciplinary hearing. The employer's disciplinary process provided that an employee could be represented by a colleague or trade union representative and Mr McKelvey's request was denied. The High Court found that it would be contrary to the principles of fair procedure and natural justice to deny him the right to legal representation. However, on appeal, the Court of Appeal did not agree with the High Court.

Lyons appeared to suggest that the right to legal representation must exist were an employee could face dismissal in a disciplinary process. However, Ms Justice Irvine was of the view that the sanction of dismissal is not an exceptional feature of disciplinary hearings in the workplace. She stated that the fact that the sanction had the potential to be grave did not mean that Mr McKelvey was at any greater risk of receiving an unfair hearing without legal representation than if he was at risk of a lesser sanction. Ms Justice Irvine stated that although the consequences of any finding against Mr McKelvey in the disciplinary inquiry may have an impact on his future employment prospects and his reputation, in this regard he is no different to many employees facing allegations of misconduct in the workplace.

In wholly endorsing the *Burns* decision, Ms Justice Irvine concluded that 'legal representation should only be permitted in cases where the employee can demonstrate the existence of exceptional circumstances which would caution that the employee might not receive a fair hearing absent legal representation.'

Ms Justice Irvine said that the allegation of misconduct made against Mr McKelvey was a straightforward one and there was nothing in the evidence to suggest that the circumstances were in any way complex. Ms Justice Irvine also remarked that the involvement of lawyers would invariably slow down a disciplinary process and make it more costly, and that it could also potentially have significant adverse consequences for the relationship between management and the employee under investigation, and also between employees themselves.

2 [2018] IECA 346.
3 [2017] IEHC 272.
4 [2009] 3.1.R. 682.
5 [2018] IECA 346.

Ms Justice Irvine stated that the fact that the conduct under investigation had the potential to result in criminal prosecution at a later date was not unusual in the context of an inquiry into incidents of theft in the workplace. She also commented that any finding against Mr McKelvey in the disciplinary inquiry would not be admissible as evidence against him in any future criminal proceedings, and he would be entitled to be legally represented in such proceedings.

The decision of the High Court in *Lyons* last year created a degree of uncertainty around disciplinary processes. However, the Court of Appeal decision provides welcome clarity for employers in that they can refuse a request for an employee to be legally represented at disciplinary hearing unless there are exceptional circumstances, such that the employee would not receive a fair hearing without legal representation.

ii Disability discrimination – duty of reasonable accommodation

Nano Nagle School v. Daly[6]

This is a long-running case concerning a claim by Ms Marie Daly, a special needs assistant (SNA), against Nano Nagle School, a special needs school, for failure to adequately consider or evaluate potential options of reasonable accommodation. Ms Daly had been employed by the school since 1998 but was paralysed from the waist down following a road traffic accident in 2010, leaving her wheelchair-bound. She sought to return to work following a period of rehabilitation after the accident.

The school carried out a number of occupational health, ergonomic and risk assessments, and determined that Ms Daly would be unable to perform nine of the 16 core duties associated with her role as an SNA. On that basis, the school concluded that she was medically unfit to return to her role and she was dismissed on incapacity grounds. The school did not discuss any alternative options to reasonably accommodate Ms Daly's return to work with either her or the other SNAs employed by the school.

Ms Daly brought a claim under the Employment Equality Act 1998 (as amended by the Equality Act 2004) (the Act) claiming that the school failed to provide reasonable accommodation for her, as required by Section 16 of the Act, which would have enabled her to return to her employment. Section 16 of the Act provides that employers are obliged to take appropriate measures to enable an employee with a disability to undertake the essential duties of their position, subject to this not being a disproportionate burden. If these measures are taken and the employee is still not fully competent and capable of undertaking the role, then the employer is not obliged to continue the employment.

Ms Daly was initially unsuccessful in the Equality Tribunal (now the WRC) but this was overturned by the Labour Court, which awarded her compensation of €40,000. This was affirmed by the High Court, which held that the school had breached Section 16 of the Act. The school appealed this decision to the Court of Appeal, which delivered its judgment in January 2018.

The Court of Appeal considered to what extent employers are required to create new reduced roles for employees with disabilities. They confirmed that an employer must provide reasonable accommodation to an employee with a disability before they can lawfully terminate the contract. However, the Court of Appeal outlined that an employer is not expected to create a new role for an employee with a disability. A key question that arose was whether

6 [2018] IECA 11.

Ms Daly had to be capable of only some of the tasks required of an SNA or all of the tasks required. In this regard, the Court of Appeal confirmed that employers are not required to remove the essential tasks of the position ('the precisely essential elements that the position entails'). If no reasonable adjustments can be made for an employee with a disability, the employer is not liable for failing to consider the issue.

In this case, Ms Daly was no longer able to perform the essential tasks of an SNA in the school, regardless of the accommodations that would be put in place. Section 16 of the Act requires employers to objectively assess whether reasonable accommodations can be made to enable an employee with a disability to perform the essential duties of their role, which they would otherwise be unable to perform. The Court of Appeal also confirmed that an employer will not have failed to reasonably accommodate a disabled employee even if they do not consult the employee when considering what adjustments could be put in place. On that basis, the Court of Appeal allowed Nano Nagle's appeal. In doing so, the decision of the Labour Court, which was upheld by the High Court, was overturned and the award of compensation of €40,000 was vacated.

This case is currently on appeal to the Supreme Court.

iii Bullying

Hurley v. An Post[7]

This case relates to a postal worker, Ms Catherine Hurley, who was involved in an incident with another co-worker in 2006 who acted aggressively and was subsequently suspended. Following the suspension, Ms Hurley claimed that her co-workers ignored and isolated her, and she was not welcome to attend work social events such as the Christmas party. She raised these issues with HR several times but was told that matters would 'die down'. The situation did not improve, which caused Ms Hurley to be absent from work on stress leave. She was dismissed by An Post in 2011. She brought High Court proceedings against An Post for negligence, breach of duty and breach of contract as a result of the bullying she had experienced.

In the High Court,[8] Mr Justice McDermott outlined the duties that an employer owes to its employees who allege that they are being subjected to bullying by their co-workers. He confirmed that an employer has a common law duty to take all reasonable precautions for the safety of employees and not expose them to any reasonably foreseeable risk of injury. He also noted that an employer owes a statutory duty to do this under Section 8 of the Safety, Health and Welfare at Work Act 2005. He held that 'an accumulation of petty daily humiliations and repeated spiteful or petty actions with a continuing social rejection or exclusion is the very essence' of the legal definition of bullying. Mr Justice McDermott found that her deteriorating physical and mental health, including post-traumatic stress disorder (PTSD), should have been reasonably foreseeable. He found that An Post made no efforts to engage with Ms Hurley and did not advise her that she could make a formal complaint that could lead to disciplinary action. An Post also failed to caution other workers against this behaviour.

Mr Justice McDermott concluded that An Post were liable for the harassment and bullying of Ms Hurley by her co-workers. This judgment addressed the level of damages to which the plaintiff was entitled as a result of the personal injuries, loss and damage. Expert

7 [2018] IEHC 166.

8 [2017] IEHC 568.

evidence was provided from her doctors and a medical expert called by the defendant. Justice McDermott noted that the plaintiff was traumatised by the incident and felt ostracised and alone. She made a number of complaints to management staff but received no support. The company nurse told her to return to work and see how things were. The plaintiff's GP noted that she was unable to cope with the stress at work.

Ms Hurley took various periods of sick leave between December 2006 and the termination of her contract in 2011. She complained of neck pain, shoulder pain, bursitis of the hip, insomnia and low mood. She was diagnosed with PTSD in 2012. The medical evidence in the judgment noted that she suffered stress, anxiety and PTSD as a result of the incident in 2006, and her subsequent treatment in the workplace after this. The plaintiff's doctors concluded her symptoms were stress-related. The defendant's medical expert disagreed that she was suffering PTSD and instead asserted she had anxiety depressive disorder.

Having examined all the medical evidence in the case, the Court concluded that the plaintiff was suffering from a moderate form of PTSD as a result of the incident and the subsequent events. Justice McDermott noted that the bullying and harassment contributed to this. He concluded that she was entitled to general damages for continuing symptoms of PTSD from 2006–2011, loss of earnings and special damages. The amount awarded in respect of loss of earnings arose from the inability of the plaintiff to carry on her duties at work owing to the negligence and breach of duty of the defendant to her as an employee. She was awarded a total of €161,133.

iv Power of a statutory body to disregard national law rules contrary to EU law

Minister for Justice and Equality and The Commissioner of the Garda Síochána v. Workplace Relations Commission & Others[9]

In early December 2018, the Court of Justice of the European Union (CJEU) held that the WRC has the authority to disapply or ignore a rule of national law that is contrary to EU law. Until now, this power was confined to the High Court. This is a very significant judgment that has implications for all national bodies established by law to ensure enforcement of EU law in a particular area, as it potentially extends their powers to disregard any provision of national legislation that is contrary to EU law.

The CJEU decision arises from a preliminary ruling by the Supreme Court to the CJEU. The Supreme Court case itself involves three individuals who were refused permission to join An Garda Síochána (the police service in Ireland) because they were older than the maximum recruitment age of 35. They complained to the Equality Tribunal (now the WRC) that this upper age limit constituted discrimination on the grounds of age, which was prohibited by EU and Irish law. The Minister for Justice and Equality contended that only courts established under the Constitution had the power to decide whether to disregard a provision of national law.

The High Court held that the Equality Tribunal did not have jurisdiction to disapply national law where it is incompatible with EU law, this being a power given to the High Court only. The Equality Tribunal appealed this decision to the Supreme Court. It referred a request for a preliminary ruling on the matter to the CJEU.

9 Case C-378/17.

The CJEU referred to the primacy of EU law meaning that national courts, in the exercise of their jurisdiction, have a duty to give full effect to the provisions of EU law and refuse to apply conflicting provisions of national law.

In deciding on the question referred, the CJEU noted that the WRC was established by the Irish legislature to ensure compliance with the Directive on equal treatment in employment and occupation.[10] It noted that the WRC is required, owing to the primacy of EU law, to ensure that individuals receive the full legal protections derived from EU law. It noted that this includes the WRC, of its own motion, disapplying or disregarding any provision of national legislation where it is contrary to EU law. The CJEU noted that if the WRC could not do so, then EU law in the areas of equality in employment would be rendered less effective.

The CJEU also clarified that the WRC does not need to request or await the contrary provisions of national law to be set aside. Importantly, the CJEU noted in its judgment that it has repeatedly held that the duty to disapply or disregard national legislation that is contrary to EU law is owed by all organs of the state, including administrative authorities.

This decision is noteworthy as it means that the power to disapply or disregard national law if it conflicts with EU law is not confined to courts of law. It potentially extends those powers to all national bodies and administrative authorities in EU Member States that are tasked with applying EU law. In the area of enforcement of employment rights, this decision will likely have an immediate impact on decisions issued by the adjudication service of the WRC where provisions of Irish legislation are identified as being contrary to EU law.

v Excessive working hours

Kepak Convenience Foods v. Grainne O'Hara[11]

This is an important Labour Court decision regarding excessive working hours in the context of the Organisation of Working Time Act 1997 (OWTA).

By way of background, Ms Grainne O'Hara was a business development executive who was required to work 40 hours per week under the terms of her employment contract. The nature of her role was that she would conduct customer site visits across Leinster during the day, and was then required to record her activities and engagement with customers on a computerised reporting system.

When Ms O'Hara's employment was terminated in April 2017 (and prior to her having 12 months' service), she brought a claim to the WRC stating that she worked in excess of 48 hours a week in breach of the OWTA. In the WRC, Ms O'Hara produced copies of emails that she had sent and received prior to her contractual start time and after her contractual finish time. She asserted that she worked approximately 60 hours a week. She claimed that, because a large part of her role involved conducting site visits, she was required to work from home in the evenings and at weekends in order to complete all her required tasks.

In response, her former employer, Kepak, argued that the volume of work undertaken by Ms O'Hara was in line with that undertaken by other members of staff, none of whom worked in excess of the maximum working week. Kepak submitted that she could have

10 Directive 2000/78/EC.

11 DWT1820.

comfortably completed her work within the contracted 40 hours each week. Kepak claimed that Ms O'Hara chose to adopt a less efficient procedure for completing her administrative tasks and argued that this may have increased the time she spent on such tasks.

In the WRC, the adjudication officer noted that the OWTA provides for a maximum working week of 48 hours and criticised Kepak for having no system in place for recording Ms O'Hara's hours of work. The adjudication officer noted that Kepak often responded to the emails late at night and so was aware that Ms O'Hara was working excessively and had permitted her to do so. Ms O'Hara was awarded compensation of €6,240.

An appeal was brought to the Labour Court by both parties. Kepak appealed the decision in its entirety, whereas Ms O'Hara brought a cross-appeal on the level of compensation that she had been awarded by the adjudication officer. The key issues considered by the Labour Court were whether Kepak had 'permitted' Ms O'Hara to work in excess of the maximum average working hours set out in Section 15 of the OWTA (i.e., more than an average of 48 hours per week) and whether Kepak kept proper working-time records as required by Section 25 of the OWTA.

The Labour Court held that Kepak had breached Sections 15 and 25 of the OWTA as they had permitted Ms O'Hara to work in excess of a 48 hour week and had failed to keep records of her work hours. The Labour Court also found that Kepak had failed to contradict her evidence concerning late-night emails and they were aware that she was working beyond her normal working hours. The Labour Court increased the compensation awarded to the employee to €7,500 to reflect the systematic nature of the breaches of the OWTA that had occurred.

IV BASICS OF ENTERING AN EMPLOYMENT RELATIONSHIP

i Employment relationship

Under the Terms of Employment (Information) Act 1994, all employers are obliged, within two months of commencement of employment, to provide their employees with a written statement setting out certain fundamental terms of their employment:

a date of commencement of employment;
b full name and address of employer, and name of employee;
c the employee's place of work;
d the job title or a description of the nature of the work;
e if a temporary or fixed-term contract, the expiry date;
f pay, including overtime, commission and bonus, and methods of calculating these;
g whether pay is to be weekly, monthly or otherwise;
h the pay reference period;
i terms and conditions relating to hours of work and overtime;
j holiday or other paid leave entitlement;
k notice requirement;
l details of rest periods and breaks;
m details regarding sickness and sick pay;
n details of pensions and pension schemes; and
o reference to any applicable collective agreements.

The statement must be signed both by the employee and by the employer. It must be retained by the employer during the employment and for one year after the employee's employment has ceased. Any change to the statutory particulars must be notified to the employee, in writing, within one month.

Additionally, it is recommended that employers consider what other terms might be necessary and appropriate, and prepare comprehensive contracts. Other relevant terms will depend on the seniority of the employee, and will range from intellectual property and exclusivity of service provisions, to post-termination restrictive covenants. Any changes or amendments to the employment contract of a material nature can only be implemented, generally, with the agreement of both parties.

Fixed-term contracts are governed by the Protection of Employees (Fixed-Term Work) Act 2003 and provides that where employees are employed on a series of fixed-term contracts, which exceed the aggregate period of four years, they may be entitled to a contract of indefinite duration.

ii Probationary periods

There is no Irish legislation that deals with probationary periods. Therefore, a probationary period will only be effective if expressly provided for. The terms of the probationary period, including duration, the length of notice and whether or not the employer has discretion to extend it, should be set out in the contract.

Although there is no statutory limit on how long an employee can be retained on probation, he or she will be covered by the UDA once 12 months' continuous service is accrued, which will include any period of notice of termination. Accordingly, the right to protection against unfair dismissal will apply once the 12-month service threshold has been reached, even if the employee is still on probation. Employers will therefore usually seek to conclude the probationary period before the employee acquires 12 months' service.

iii Establishing a presence

An employer does not need to be registered as an entity or otherwise based in Ireland. In practice, and for varying tax and regulatory reasons, a large number of Irish employees across all sectors are employed by and report to foreign entities based outside Ireland. Similarly, it is also possible to hire employees through an agency without registering in Ireland.

A foreign employer will, however, be required to register for pay-as-you-earn (PAYE) income tax in Ireland where the income of its employees is within the scope of the Irish PAYE system. In addition to registration, the employer must deduct the amount of income tax due from the employees directly, and remit such amounts to the Revenue Commissioners. If, however, the foreign employer is engaging an independent contractor, it will be the independent contractor's responsibility to pay the appropriate taxes, and not that of the foreign employer.

Income from non-Irish employment that is attributable to the performance in Ireland of the duties of that employment is also chargeable to Irish income tax and is within the scope of the PAYE system.

As regards mandatory benefits, at a minimum, an employer is required to provide its workforce with access to a Personal Retirement Savings Account if it does not have a pension scheme available to its employees within six months of joining their new place of work. There is also no obligation on the employer to make any contributions on the employee's behalf.

V RESTRICTIVE COVENANTS

The Competition Act 2002–2017 (as amended) prohibits agreements between undertakings that prevent, restrict or distort competition. As employees are considered to be part of an undertaking and are not undertakings themselves, the Competition and Consumer Protection Commission considers that employment agreements are not covered by the competition rules. However, once an employee leaves an employer and sets up his or her own business, he or she will then be regarded as an undertaking. The Competition and Consumer Protection Commission has set out guidelines as to what types of non-compete provisions, in particular, will be acceptable in such situations. Generally, they must be reasonable in subject matter, geographical scope and duration.

The common law is also of relevance to the issue of restrictive covenants. The basic position applied by the courts is that such covenants are, *prima facie*, unenforceable for being unduly in restraint of trade, unless the party seeking to rely on them can demonstrate that the restrictions in question are no more than what is strictly necessary to protect a legitimate business interest and are not otherwise contrary to the public interest.

VI WAGES

i Working time

The OWTA deals with maximum working hours and other matters related to working time. Pursuant to the OWTA, an employer may not permit any employee to work for more than an average of 48 hours per week, although this can generally be averaged over four months. Working time should only take account of time spent working (i.e., it should exclude rest and meal breaks). The average period for night workers is two months; for employees working in agriculture and tourism it is six months; and it can be up to 12 months for employees covered by an approved collective agreement.

Employees cannot opt out of the 48-hour average working week. The legislation does, however, provide a particular exemption for senior or specialist employees, who can be said to determine their own working time, such that they are not subject to the restriction. The contracts of such employees should expressly provide that they are exempt from this part of the OWTA.

ii Overtime

Generally, there is no statutory entitlement to overtime under Irish law, or to payment for overtime. In certain cases, however, specific categories of workers may be entitled to overtime pay if covered by a registered employment agreement (REA), SEO or an employment regulation order (ERO).

For those employees not covered by an REA, SEO or ERO that is still valid, they will only be entitled to paid overtime if such an entitlement is contained in their employment contract or has been established by custom and practice in the employment concerned. Section 14 of the OWTA provides that employers that require employees to work on Sundays are required to compensate them for so doing.

VII FOREIGN WORKERS

European Economic Area (EEA) nationals and Swiss nationals do not require employment permits to work in Ireland. There are different types of employment permits available depending on the circumstances. An employment permit will generally not be granted if the result in doing so means that more than 50 per cent of a company's employees are non-EEA nationals; however, there are some limited exceptions to this.

Intra-Company Transfer Employment Permits can be granted to senior executives, key personnel or employees engaged in a training programme. Critical Skills Employment Permits can be granted to individuals earning €60,000 or more, or where the role is highly skilled and the applicant has a relevant third-level degree, between €30,000 and €59,999. General Employment Permits are also available in limited circumstances.

Most employment permits can be granted for an initial period of up to two years, after which time, they can be renewed, if required. A Critical Skills Employment Permit can only be granted for a minimum two-year job offer, after which the non-EEA national may apply for a Stamp 4 permission to continue to work in the state without an employment permit.

There is no requirement to keep a register of foreign workers, but it is good practice to do so, in particular noting the expiration dates of employment permits to ensure that all employees have a valid permit or immigration permission in place. Once an employee is legally able to work in Ireland, he or she is entitled to the same statutory benefits and subject to tax as if he or she were originally from Ireland.

The Employment Permits Acts 2003–2014 apply significant penalties for employing non-EEA nationals without a valid employment permit. The maximum penalty for this offence is a fine of up to a €250,000 or up to 10 years' imprisonment, or both.

VIII GLOBAL POLICIES

The UDA requires employers to provide employees with a written disciplinary procedure, which can either form part of the contract of employment or be kept as a separate document. This information must be furnished to employees within 28 days of commencement of employment. While there is no specific form for this to take, it must at least adhere to the concept of natural justice and fair procedure as enshrined in the Irish Constitution. In addition, a Code of Practice concerning grievance and disciplinary procedures in the workplace was introduced in 2000, which provides general guidelines in relation to the preparation and application of disciplinary procedures. While not obligatory, failure to apply the guidelines (in the absence of any other express procedure) could be held against an employer should an employee dispute their dismissal.

Employers are not required to obtain the approval of employees regarding the preparation or implementation of disciplinary procedures, although agreement in relation to such matters will often be obtained where collective bargaining takes place. A disciplinary policy must not discriminate against employees contrary to the Employment Equality Acts 1998–2015 (i.e., on one of the following nine grounds: gender; family status; age; disability; sexual orientation; race; religion; civil status; or membership of the Traveller community), and must otherwise be fair and reasonable (i.e., provide that an employee is made aware of all the charges against him or her, is afforded a reasonable opportunity to rebut such charges and is afforded adequate representation throughout the process). Additionally, the level of sanctions should be staggered to reflect the seriousness of the offence. It will suffice for the disciplinary policy to be available on an employer's intranet, provided employees are made

aware of this. If the employer does not have this facility, employees should be advised of where they can obtain a copy of the policy. The policy should generally, as a matter of best practice, be available in English and in any other language spoken by employees. Disciplinary procedures do not have to be filed with any state or government authority.

IX TRANSLATION

There is no statutory requirement for employers to translate employment documents into other languages, and traditionally employers have provided these documents in English only. Best practice, however, and a decision of the Equality Tribunal (now the WRC) in 2008, suggests that it may be prudent to make such documents available in different languages, depending on the circumstances. In *58 Named Complainants v. Goode Concrete Limited*,[12] non-Irish employees contended that their contracts and safety documentation were defective on the basis that they were unable to understand them, and that this constituted discrimination. The Equality Officer found that the employees were treated less favourably than Irish employees in relation to their employment contracts. It was held that employers should have in place clear procedures to ensure non-Irish employees are able to understand their employment documentation and are not treated less favourably than Irish employees.

The Equality Officer did find that if an employer is not in a position to have these documents translated, it should arrange to have the contracts and other documentation explained to all employees by someone who speaks a language they understand, with the employee signing a form acknowledging that the contract has been explained to them and that they understand its contents.

There is no clear direction on exactly which documents are required to be translated or explained. The *Goode* decision, however, and common sense would dictate that this should be done in respect of employment documents such as the contract of employment and any documentation ancillary to it.

The Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012 is an example of an employment code and guidelines building on the *Goode* decision. The Code of Practice outlines that employers should ensure that staff have access to equality policies, including by means of certain measures 'to provide, where necessary, for the translation of policies and procedures into languages other than English as appropriate with provision of interpreters'.

Where documents are not translated or explained to the employee, employers face the risk of discrimination claims where employees can be awarded up to two years' gross remuneration.

X EMPLOYEE REPRESENTATION

The concept of employee representation under Irish law relates to both unionised and non-unionised employees, and is derived from a number of sources, both statutory and otherwise.

12 DEC-E2008-020.

i Trade union representation

Any employee has the right to join a trade union, although trade unions may not legally compel employers to recognise and negotiate with them. The degree to which trade unions may embark upon industrial action (either to try to gain recognition from employers, or for any other reason) is regulated principally by the Industrial Relations Act 1990. The method of appointing employee representatives is done by way of secret ballot.

ii Information and consultation representation

In addition to any local representation arrangements that may exist (whether with trade unions or otherwise), employees may also be entitled to representation in certain circumstances as a matter of statute. This form of representation can arise in transfer of undertakings, collective redundancy situations or where the employees are covered by a local or European-level works council.

The Transnational Information and Consultation of Employees Act 1996 (as amended) (which implemented Council Directive 94/45/EC on European Works Councils) (the 1996 Act), requires multinational employers of a certain size to set up European works councils to inform and consult with their employees on a range of management issues relating to transnational developments within the organisation. The 1996 Act applies to undertakings with at least 1,000 employees in the EU and 150 or more employees in each of at least two Member States. A special negotiating body (SNB) is established in accordance with the 1996 Act in order to negotiate with the employer. The duration and functions of the SNB will be subject to the terms and purpose of the Works Council agreement put in place. The Employees (Provision of Information and Consultation) Act 2006 obliges employers with at least 50 employees to enter into a written agreement with employees or their elected representatives setting down formal procedures for informing and consulting with them. The legislation will only apply if a prescribed minimum number of employees request it. The legislation is silent on how employee representatives are elected, and it will be up to the employees to determine how this is conducted, but usually it is done by way of secret ballot. The purpose of their role and how they conduct themselves will be subject to their own agreement.

The Employment Equality Acts provide that no employee should be discriminated for being a trade union member. Further, all of the above legislation specifically provides that no employee representative should be penalised for carrying out their function as an employee representative.

XI DATA PROTECTION

i General principles

Issues regarding the keeping and disclosing of personal data relating to employees are governed by the GDPR and the Data Protection Act 2018. Under the GDPR, an employer established in Ireland that gathers, stores and processes any data about employees in any computerised or structured manual filing system is deemed to be a controller of that data.

Controllers must follow eight fundamental data protection rules:

a obtain and process information lawfully, fairly and in a transparent manner;

b only keep the information for one or more specified, explicit and legitimate purposes;

c process the information only in ways compatible with these purposes;

d ensure the information is processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing, and against accidental loss, destruction or damage, using appropriate technical and organisational measures;
e keep the information accurate, complete and up to date;
f ensure that the information is adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed;
g retain the information for no longer than is necessary; and
h be responsible for and demonstrate compliance with the above principles.

When collecting personal data from an employee, the controller is required to provide certain information to the employee, including:
a the identity and contact details of the controller;
b the contact details of the data protection officer (if applicable);
c the purposes of the processing and the legal basis for the processing;
d the recipients or categories of recipient that personal data has been disclosed to;
e the safeguards provided by the employer if it transfers personal data to a third country or international organisation;
f the period for which personal data will be stored;
g the existence of the various data subject rights;
h the employee's right to request rectification, erasure or restriction, or to object to such processing;
i the right to lodge a complaint with the Data Protection Commission;
j the existence of automated decision-making, including profiling (if applicable); and
k information about the source of the data, if not obtained directly from the employee.

In practice, some of this information may be provided in the employer's privacy notice.

Employees have a number of rights under the GDPR, including the right (subject to certain exceptions) to obtain a copy of any personal data relating to them that is kept on the employer's computer system or in a structured manual filing system by any person in the organisation.

The GDPR does not specify how to make a valid request, so it may be done verbally or in writing, and employers must respond to the request within one calendar month of receipt of the request. The right to access personal data does not apply if that access would adversely affect the rights and freedoms of others.

Under the GDPR, all public bodies and authorities (other than courts acting in their judicial capacity) are mandated to have a data protection officer (DPO), as well as any employer whose core activities consist of:
a data processing operations that, by virtue of their nature, scope and purposes, require regular and systematic monitoring of employees on a large scale; or
b data processing on a large scale of the special categories of data and data relating to criminal convictions.

Where appointment of a DPO is not mandatory but one is appointed through choice, the organisation will be subject to the same provisions set out in the GDPR as though the appointment was mandatory. A DPO may be a member of staff at an appropriate level,

part-time or full-time, an external DPO or one shared by a group of organisations, provided that they have the required expertise and that any other role that they may hold in the organisation does not give rise to a conflict of interest with the DPO role.

Details of DPOs must be registered with the Data Protection Commission and published to relevant individuals (including employees and other data subjects).

ii Cross-border data transfers

Ireland, like other EU Member States, restricts the transfer of personal data from Ireland to jurisdictions outside the EEA that do not 'ensure an adequate level of protection', unless the transfer meets one of a number of conditions, including but not limited to:

a the transfer is pursuant to the standard contractual clauses that have been specifically adopted by the European Commission for international transfers of data;

b the transfer is to an entity that is subject to the US–EU Privacy Shield Program operated by the US Department of Commerce; or

c the transfer is pursuant to binding corporate rules put in place within the employer's group and approved by the Data Protection Commission (or another relevant lead supervisory authority).

iii Special categories of personal data

The GDPR defines special categories of personal data to include data concerning racial or ethnic origin, political opinion, religious or philosophical beliefs, or trade union membership, and genetic data, biometric data for the purpose of uniquely identifying an individual, or data concerning health, or sexual life or sexual orientation. Special categories of personal data may not be processed by an employer except in very limited circumstances (e.g., where processing of health data is required to assess the working capacity of the employee). The processing of data relating to criminal convictions and offences may only be carried out under the control of official authority and subject to other conditions set out in the Data Protection Act 2018.

iv Background checks

Employers can carry out a number of background checks on applicants for employment. These can include reference checks, credit-history checks, education verification, verification of entitlement to work in Ireland and also pre-employment medical assessment. Before carrying out any background checks, the resulting data must be relevant to the individual's role and the employer will need to have established a lawful basis under the GDPR to obtain and process the data. In respect of any method used by the employer to verify a prospective employee's background, it should be ensured that this method is applied consistently to all applicants, and is not discriminating on any one of the nine grounds protected by the Employment Equality Acts (see Section VIII). The ability to process criminal data is greatly restricted by the GDPR and the Data Protection Act 2018. As noted in subsection iii, the processing of data relating to criminal convictions and offences may only be carried out under the control of official authority and subject to other conditions set out in the Data Protection Act 2018.

XII DISCONTINUING EMPLOYMENT

i Dismissal

An employer can, at common law, terminate the employment contract without cause, provided this is done in accordance with its terms. If a term of the contract is breached, however, this can give rise to a claim for damages at common law, or even to a claim for injunctive relief in certain circumstances. Notwithstanding any express contractual right to terminate, employees are afforded statutory protection against unfair or discriminatory dismissal. Under the UDA, an employer cannot lawfully dismiss an employee unless substantial grounds exist to justify termination. Also, it is essential for an employer to be able to establish that fair procedures have been followed before making a decision to dismiss. Subject to certain exceptions, employees must have at least 12 months' continuous service to qualify for protection under the UDA.

To justify a dismissal, an employer must generally be able to show that it resulted wholly or mainly from one or more of the following grounds:

a the capability, competence or qualifications of the employee for the work concerned;
b the conduct of the employee;
c the redundancy of the employee; or
d the employee being prohibited by law from working or continuing to work (e.g., not holding a valid work permit where one is required).

If the dismissal is not because of any of the grounds listed above, there must be some other substantial grounds to justify it. If an employee believes that he or she has been unfairly dismissed, he or she may bring a claim to the WRC. An adjudicator can award redress in the form of compensation (subject to a maximum of two years' remuneration), reinstatement or re-engagement.

A dismissal is automatically deemed unfair under the UDA, if an employee can show that his or her dismissal was wholly or mainly attributable to one of the following:

a membership or proposed membership of a trade union or engaging in trade union activities;
b religious or political opinions;
c legal proceedings against an employer where an employee is a party or a witness;
d race, colour, sexual orientation, age or membership of the Traveller community;
e pregnancy, giving birth, breastfeeding or any matters connected with pregnancy or birth;
f making a protected disclosure under the Protected Disclosures Act 2014;
g the exercise or proposed exercise by the employee of the right to parental leave, *force majeure* leave, carer's leave, maternity leave, adoptive leave and paternity leave.

Where an employee alleges that he or she has been dismissed in a discriminatory manner (i.e., on one of the nine grounds upon which discrimination is prohibited by the Employment Equality Acts; see Section VIII), he or she may bring a claim before the WRC, and subsequently before the Labour Court on appeal. Either of these bodies may award compensation (subject to a maximum of two years' gross remuneration, depending on the claim) or reinstatement. In gender discrimination cases, a claim may be made directly to the Circuit Court, which can, in theory, award unlimited compensation. There is no minimum service threshold for an employee to be covered by this legislation.

Once in continuous employment for at least 13 weeks, minimum periods of statutory notice of termination must be given to an employee. The minimum length of the notice period will depend on the employee's length of service (although greater periods of notice can be provided for by contract):

a between 13 weeks and two years' service: one week's notice;
b between two years' and five years' service: two weeks' notice;
c between five years' and 10 years' service: four weeks' notice;
d between 10 years' and 15 years' service: six weeks' notice; and
e 15 years' or more service: eight weeks' notice.

An employee may waive their right to notice and accept payment in lieu of notice. Alternatively, the contract can stipulate a right to pay in lieu of notice. An employer may dismiss an employee without notice or payment in lieu of notice if the employee has fundamentally breached the employment contract amounting to a repudiation of the employment contract, or where they are guilty of gross misconduct.

To settle a dispute including a redundancy situation, compromise or claim, the parties can enter into a settlement agreement. As a matter of contract law, the employee must receive something over and above what they might otherwise be entitled to in order for the settlement agreement to be enforced. The employee should also be advised in writing and given the opportunity to obtain independent legal advice in relation to the terms and conditions of the agreement.

ii Redundancies

The Protection of Employment Act 1977 must be complied with when an employer intends to implement collective redundancies. Collective redundancy occurs when, in a period of 30 days, the number of such dismissals is:

a at least five in an establishment employing more than 20, but fewer than 50 employees;
b at least 10 in an establishment employing at least 50, but fewer than 100 employees;
c at least 10 per cent of the number of employees at an establishment employing at least 100, but fewer than 300 employees; and
d at least 30 in an establishment employing 300 or more employees.

Where collective redundancies are proposed, the employer must first enter into consultation with employee representatives, a trade union or a works council, with a view to reaching an agreement in relation to matters such as the possibility of avoiding or reducing the numbers to be made redundant and the criteria to be used in selecting employees for redundancy. The consultation must commence at least 30 days before notice of the first redundancy is issued. The Minister for Employment Affairs and Social Protection must also be notified at least 30 days in advance of the first notice of termination by reason of redundancy being confirmed.

The Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 established a redundancy panel to which employees or employers may refer certain proposed collective redundancies for an opinion and possible Labour Court hearing in circumstances where it is alleged that the dismissed employees will be replaced by new employees on lesser terms and conditions of employment. Should such a finding be

made and the employer proceeds with the redundancies nonetheless, it will be exposed to significantly increased liabilities, *inter alia*, if claims are brought by the dismissed employees under the UDA.

Although there is no express statutory form of consultation required for individual redundancies, it is best practice to do so. In this regard, it is also recommended that employers make at least some effort to locate an alternative position for the employee, if possible. As with any other form of dismissal (other than in cases of gross misconduct), notice of termination by reason of redundancy or payment in lieu thereof must be given.

It is also possible, when concluding the redundancy process, to enter into a compromise agreement with the employee, whereby he or she would be paid an *ex gratia* payment in return for him or her waiving his or her rights and entitlement to bringing any claim against the employer.

Any employee who is on protected leave (e.g., maternity or paternity leave) cannot be made redundant, and the employer will have to wait until he or she returns before engaging with him or her on the issue.

XIII TRANSFER OF BUSINESS

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (the Regulations) apply in circumstances where there is any transfer of an undertaking, business or part of an undertaking or business from one employer to another employer as a result of a legal transfer or merger. The Regulations include an assignment or forfeiture of a lease. Outsourcing of a service has also constituted a transfer within the meaning of the Regulations. The Regulations apply to any transfer within the EU, although the UK case *Holis Metal Industries Limited v. GMB & Newell Limited*[13] suggests that they might also apply to transfers outside the EU or EEA, in respect at least of the obligations of the party to the transfer located within the EU. This extraterritorial aspect of the Regulations is particularly relevant in the context of outsourcing. The importance of the Regulations and the need to assess carefully whether they apply in any given scenario cannot be underestimated.

Transfer is defined as 'the transfer of an economic entity which retains its identity'. Where a transfer within the meaning of the Regulations occurs, the acquiring party will be obliged to employ the employees of the disposing party on terms and conditions no less favourable than those previously enjoyed by them, and with their prior service intact. A lapse in time between the transferor ceasing business and the transferee resuming the business does not necessarily prevent there being a transfer of the business for the purposes of the Regulations. In assessing whether or not the Regulations apply, consideration must be given to the type of business concerned, whether there has been a transfer of assets, whether any employees have been transferred, whether customers have transferred and to what extent the activity carried on pre- and post-transfer is similar.

Where a transfer is taking place, it is important that the transferor and transferee take steps to ensure that the employees are informed in advance of the transfer. In practice, employee representatives must be informed of the reasons for the transfer and the legal, economic and social implications of the transfer for the employees, and also of any measures that are envisaged in relation to the employees. This information must be communicated

13 [2008] ICR 464.

at least 30 days in advance of the transfer, where possible, to enable the representatives to be consulted with in relation to any measures concerning the employees. The obligation to consult only occurs where there are measures envisaged in relation to the employees.

The Regulations do make provisions for transfer-related dismissals where the dismissals are because of economic, technical or organisational reasons that result in changes in the workforce. However, this defence is generally only available to the transferee. This makes it difficult for employers to implement changes before the sale of their business to make the business more attractive to prospective purchasers.

With regard to breaches of the Regulations, employees may bring complaints to the WRC, with a right of appeal to the Labour Court.

XIV OUTLOOK

It is expected that the economy will continue to improve, with employment levels continuing to steadily rise and job losses decreasing.

The national minimum wage was increased from €9.55 to €9.80 from 1 January 2019, as part of the 2019 Budget.

The Employment (Miscellaneous Provisions) Act 2018, which aims to protect low-paid and vulnerable workers by effectively banning zero-hour contracts and bringing in banded contract hours, is expected to come into operation in March 2019. Zero-hour contracts are currently governed by the OWTA and provide that an employer does not have to provide minimum (or any) working hours to an employee, but the employee must be available for work for a certain number of hours per week. This Act will amend the OWTA to prohibit zero-hours contracts in most circumstances, unless it is genuinely casual work, emergency cover or short-term relief work.

Two proposed bills on gender pay gap reporting are currently working their way through the Irish legislative process. However, it is expected that only one of these, the Gender Pay Gap Information Bill, will be progressed and ultimately enacted into law. This bill proposes to initially require publication of gender pay data in both public and private sector entities with over 250 employees. This threshold will gradually fall to just 50. Employers will be required to publish differences in hourly pay, bonus pay, part-time pay, and pay of men and women on temporary contracts. The precise mechanisms to collate and process gender pay data and the penalties for breach are yet to be determined. This bill is still early in the legislative process and is likely to be subject to further amendments.

The Parental Leave (Amendment) Bill 2017 is also currently making its way through the Irish legislative process. At the time of writing, the bill proposes to extend the parental leave entitlement to 26 weeks (six months) in respect of each child. If passed, the additional eight weeks provided for under the legislation will be made available to those parents who have already availed of the existing 18-week entitlement. The bill also proposes to increase the age of the child up to which parental leave can be taken from eight years to 12 years. There is also a proposal to introduce a new parental benefit scheme from November 2019. Legislation will be required to set out the full terms of this scheme. Once introduced, the scheme will allow employees to take two weeks' paid parental leave for each parent of a child in their first year. The government proposes to increase this to seven extra weeks over time.

Appendix 1

ABOUT THE AUTHORS

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Bryan is a partner and head of the employment practice at Matheson. He advises on a variety of aspects of employment law, both contentious and non-contentious. This work includes advising on senior executive service agreements and termination strategies for international employers, defence work in contentious employment litigation matters and all employment aspects of commercial transactions. He also regularly advises employers on internal grievance and disciplinary processes, with a particular focus on senior-executive-level employees.

Bryan's clients include a broad base of leading international companies and financial institutions, requiring diverse advice on compliance, operational and management issues in running their Irish business. Owing to his involvement in some of the largest Irish and cross-border corporate transactions in recent years, Bryan has also built up considerable experience in the employment aspects of commercial projects and reorganisations when acting for foreign purchasers, including TUPE, employee relocation and post-acquisition restructuring. He has also led the employment due diligence on a number of high-value private equity investments and acquisitions, covering numerous industry and regulated sectors in both the public and private sectors.

ALICE DUFFY

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Alice Duffy is a senior associate in the employment, pensions and benefits group at Matheson, and specialises in employment law.

Alice regularly provides strategic, practical advice to clients on all aspects of contentious and non-contentious employment law matters. This work includes advising employers on contractual and policy matters; employee relations issues; European Works Councils and special negotiating bodies; gender pay gap reporting; project and transactional support, including restructuring advice; outsourcing; and the employment aspects of corporate transactions.

She also has extensive experience advising clients on managing injunctions, High Court proceedings, and the defence of claims before the Workplace Relations Commission and Labour Court. Alice works with a variety of large national and multinational clients in many different sectors (including technology, pharmaceuticals, financial services and manufacturing).

Alice is qualified to practise in Ireland and the UK. Prior to joining Matheson, Alice trained and worked for a number of years with international law firm Clyde & Co LLP in London. Alice also has specific in-house experience having completed a secondment with LinkedIn as EMEA Employment Counsel, managing advice on employment law matters across several jurisdictions, resulting in her having an in-depth understanding of the real employment issues facing clients.

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