

What's New

The McCann FitzGerald **Employment, Pensions & Incentives Group** Update

Key Contacts

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Terence McCrann

Partner

+353 1 607 1336
terence.mccrann@mccannfitzgerald.com



Mary Brassil

Partner

+353 1 607 1279
mary.brassil@mccannfitzgerald.com



Eleanor Cunningham

Partner

+353 1 607 1723
eleanor.cunningham@mccannfitzgerald.com

Welcome to the McCann FitzGerald Employment, Pensions & Incentives update. Below is an update on some of the latest developments.

[Financial Services: Senior Executive Accountability Regime](#)

The general scheme of the proposed new accountability regime for senior executives of regulated financial service providers has been published. When enacted and implemented, the proposals will introduce highly significant changes for regulated entities and for their senior managers. On Tuesday 27 July 2021, the Minister for Finance, Paschal Donohoe TD, received Cabinet approval to publish the heads of the [Central Bank \(Individual Accountability Framework\) Bill](#) (“**Bill**”). This Bill empowers the Central Bank of Ireland to hold those in management roles at regulated firms accountable for wrongdoing which occurs under their supervision. It is hoped that the new regime will be fully implemented within the next 12 to 18 months. We provide a detailed analysis of the new regime in [our recent briefing](#).

There are four main elements to the draft legislation which make up the Individual Accountability Framework:

1. The Bill establishes the **Senior Executive Accountability Regime** (“**SEAR**”). The SEAR will be rolled out on a phased basis. Under SEAR, firms and senior individuals within these firms must lay out clearly where decision making and responsibility lies. Credit institutions such as banks, investment firms and insurance firms will fall within the scope of this legislation. SEAR will not apply to credit unions and certain aspects of the insurance industry such as insurance special purpose vehicles. The scope of the legislation may be extended in time to include additional sectors.

Key Contacts

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Stephen Holst

Partner

+353 1 511 1517
stephen.holst@mccannfitzgerald.com



Catherine Austin

Consultant

+353 1 607 1492
catherine.austin@mccannfitzgerald.com



Roisin Finn

Associate

+353 1 511 1663
roisin.finn@mccannfitzgerald.com

2. The introduction of **common conduct standards** which will be applicable to all individuals in controlled function roles, **additional conduct standards** for senior staff and **business conduct standards** which will apply to all Regulated Financial Service Providers (“**RFSPs**”) and employees within them. The Central Bank will be empowered to impose binding obligations on RFSPs and their employees with respect to these conduct standards.
3. The Bill enhances the **Fitness and Probity Regime** to guarantee the effective practice of the regime and ability of the regime to support the conduct standards.
4. The Bill breaks the “**Participation Link**” in the existing regime which requires the Central Bank to first prove the company itself has broken the rules before they can investigate and sanction individuals.

[WRC Guidance on Workplace Relations \(Miscellaneous Provisions\) Act 2021](#)

The Workplace Relations (Miscellaneous Provisions) Act 2021 (the “**Act**”) came into effect on Thursday 29 July 2021. As outlined in previous updates and in [our recent briefing](#), the Act was introduced to address issues which surfaced in *Zalewski v Adjudication Officer & Ors* [2021]. Workplace Relations Commission (“**WRC**”) practices are reformed as follows:

1. WRC hearings concerning the administration of justice (i.e. all WRC complaints except disputes that arise under Section 13 of Industrial Relations Act 1969) shall be heard in public unless the Adjudicating Officer detects “special circumstances” which justify hearing the complaint in private. “Special circumstances” include: cases where a party has a medical condition which they wish to remain undisclosed; cases regarding a protected disclosure where there is an issue of the protected disclosure being made in confidence; and cases involving a minor. As a consequence, the WRC will **no longer anonymise the parties** to a case in the absence of special circumstances;
2. Adjudication officers will be empowered to require a witness to provide their evidence under oath or affirmation; and
3. A witness will be guilty of an offence where they knowingly provide false material evidence under oath or affirmation.

Updated Code of Practice on Determining Employment Status

The Minister for Social Protection, Heather Humphries, recently published an updated Code of Practice on Determining Employment Status (the “Code”), the third version since 2001. The Code was updated by an interdepartmental working group comprising the Department of Social Protection, the Office of the Revenue Commissioners and the Workplace Relations Commission. The basis for the latest update centred on concerns around newer business models and forms of work, such as the ‘gig’, ‘digital’ and ‘platform’ economies, leading to an increasing number of individuals being categorised as ‘self-employed’ where in reality, ‘employee’ status would be more appropriate. These sectors are contributing to the evolution of the concept of an ‘employee’ as they rely heavily on short-term, flexible arrangements, rather than traditional permanent employment. The Code is intended to be a ‘living document’, which will continue to be updated to reflect future, relevant changes in the labour market, relevant legislation and case-law. The Code maintains the binary distinction between employee status and independent contractor/self-employed status, unlike other jurisdictions, such as the UK, where a third, intermediate ‘worker’ category of employment status has been developed through statute. In the UK, an individual with ‘worker’ status is entitled to certain basic employment rights, such as the national minimum wage, pension contributions, working time rights and statutory holiday pay. However it does not entitle a person to the full range of protections available to those with ‘employee’ status. Other jurisdictions have introduced a similar hybrid employment status, including Germany, Canada, France and Italy. We provide a detailed analysis of the Code in [our recent briefing](#).

€40,000 award for discriminatory dismissal

In **Joanna Sandhu v Alkimii Limited ADJ-00028563**, the complainant was employed with the respondent as an operations manager on the respondent’s installation team. In February 2020 the complainant informed her employer that she was pregnant, and in May 2020 she received a phone call informing her that she was being made redundant. There was no prior consultation, no documentation provided to her relating to the selection process and it was submitted that there was no opportunity to defend herself or to put forward alternatives. Of 20 employees, only two were made redundant. The complainant argued that she was discriminated against by reason of her gender and family status and that “*such unlawful behaviour*” is prohibited

under section 6(1), 6(2)(a) and 6(2)(c) of the Employment Equality Acts 1998 to 2015. The respondent argued that the redundancies arose due to the impact of Covid-19 on the hotel business in 2020. The Adjudicating Officer emphasised that the respondent conducted a selection process entirely hidden from the complainant and deemed it ‘concerning’ that, given that the complainant was pregnant and that the Unfair Dismissals Acts 1977 to 2015 cites pregnancy as a specific ground of unfair dismissal, an employer would consider it anything other than mandatory to consult the employee. The WRC held that the respondent had failed to satisfy the test required of giving actual grounds for an employee’s dismissal and further failed to give substantial or exceptional grounds to a pregnant employee. The WRC ordered Alkimii Ltd to pay €40,000 compensation to Joanna Sandhu for discriminatory dismissal.

[Revenue eBrief No. 148/21 Employer-provided benefits - new suite of Tax and Duty Manuals](#)

This eBrief announced that, following a comprehensive review of Revenue’s guidance material on employer-provided benefits, a consolidated suite of Tax and Duty Manuals has been created. New material has been added where appropriate and existing material has been refreshed. These manuals set out the guidance on benefits and related matters in a more comprehensive, cohesive and structured manner. A section on ‘pension contributions’ is included in Chapter 11 on Salary Sacrifice Amendments ([here](#)) and Chapter 12 on the Provision of Miscellaneous Benefits ([here](#)).

[Director convicted and fined in prosecution taken by the Pensions Authority](#)

On 26 July 2021, in Waterford District Court, Judge Staunton convicted Alan Kearney, director of Total Facades Limited, for failing to remit employee pension contributions to the trustee of the Construction Workers’ Pension Scheme (“CWPS”), within the statutory timeframe pursuant to section 58A(1) of the Pensions Act 1990, as amended. Total Facades Limited had deducted pension contributions from the wages and salaries of its employees between April and August 2018 for remittance to the trustee of the CWPS but had failed to remit the contributions within the statutory timeframe. However, a significant portion of the outstanding employee contributions due to the scheme were repaid prior to sentencing. Mr Kearney was fined €1,000.



Principal Office

Riverside One, Sir John Rogerson's Quay
Dublin 2 D02 X576
+353 1 829 0000

London

Tower 42, Level 38C, 25 Old Broad Street
London EC2N 1HQ
+44 20 7621 1000

New York

One Rockefeller Plaza, 30th Floor
New York, NY 10020
+1 646 952 6001

Brussels

40 Square de Meeûs, 1000 Brussels
+32 2 740 0370

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