

What's New

The McCann FitzGerald Employment, Pensions & Incentives Group Update

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

[Immediate changes to Workplace Relations Commission Procedures](#)

Following a landmark Supreme Court judgement on 6 April 2021 in *Zalewski v. Adjudication Officer and WRC, Ireland and the Attorney General* [2021] IESC 24, the Workplace Relations Commission (the “WRC”) has made a number of significant changes to its established procedures with immediate effect. We consider these changes in a recent [briefing](#), which include that most WRC hearings must now be held in public and decisions of Adjudication Officers will be published, including the names of the parties. The WRC has published a notice outlining the changes (available [here](#)), highlighting that mediation is also unaffected by the Supreme Court judgment and remains an option in all cases submitted for adjudication and will continue to be entirely confidential. On Wednesday, 5 May 2021, [the Oireachtas Joint Committee on Enterprise, Trade and Employment](#) debated whether pre-legislative scrutiny should be waived with respect to the proposed Workplace Relations (Miscellaneous Amendments) Bill 2021. Tara Coogan of the Department of Enterprise and Employment indicated that, as a result of the Supreme Court judgment, some hearings that may be half way to completion or had been adjourned may now have to be restarted, potentially before a new adjudication officer, primarily due to the fact that there might have been “evidence obtained or a situation that took place without the oath provision”. Ms Coogan also stated that some hearings may need to be restarted “in the interests of justice”. Conversely, a recent WRC decision, [Ramunas Jasinkas v MCR Outsourcing](#) ([ADJ- 00030932](#)), delivered on 20 April 2021, is one of the first to remove the anonymity feature for rights-based claims at the WRC.

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[Workplace Relations Commission 2020 Annual Report Published](#)

The WRC has recently published its 2020 annual report (available [here](#)), reflecting a jump in individual redundancy claims and a decline in discrimination claims. The WRC's annual report notes that redundancy claims at WRC adjudication have rocketed six-fold in 2020, from 647 claims in 2019 to 3,894 in 2020. The most common type of claim for adjudication in 2020 was pay-related (4,117), following by redundancy (3,894) and then working hours (3,150). Agency-related claims, though they are of a much lower proportion overall, jumped, from an annual average of under 50, up to 219 in 2020. Notably, employment equality referrals were down 27% in 2020, from 1,288 referrals in 2019, to 939 last year. There is a continued improvement for how WRC adjudication decisions fare on appeal to the Labour Court. Of decisions appealed to the Labour Court in 2020, 53% were upheld – the first time this success rate has passed 50%.

[European Union \(Occupational Pension Schemes\) Regulations 2021](#)

On 27th April 2021, the IORP II Directive was transposed into Irish law. The [European Union \(Occupational Pension Schemes\) Regulations 2021](#) were signed into law will substantially reform the occupational pension. There are new minimum qualification and experience standards for boards of trustees. The legislation enhances the powers of the Pensions Authority and consequently the it will enjoy increased oversight and intervention powers with a greater emphasis on the day to day management of schemes. This means that the Pensions Authority will not just be looking at past breaches of the Pensions Act, it will now also be considering whether there are any shortcomings or weaknesses in the pensions schemes that may pose threats to member benefits in the future. The legislation also introduces new rules in relation to the internal audit and risk assessment of schemes, specifically the requirement for written policies in these areas. This will mean that trustees will now have to examine all of these aspects in their pension schemes. This signals a shift towards a risk based and forward looking approach. Undoubtedly there will be an increase in costs, including management time, particularly for smaller pension schemes which will need to prove they are being properly supervised in line with the new requirements. It is envisaged

now that employers and trustees will have to carry out self-assessments of their schemes and structurally review the schemes currently in place. Finally, the Regulations remove some barriers to cross-border provision and the facilitation of cross border transfer of pension schemes.

Sectoral Employment Orders and Employment Regulation Orders – Recent Developments

Damien English TD, Minister for Business, Employment and Retail, has [approved an Employment Regulation Order \(“ERO”\) for the Security Industry](#), which provides for a pay increase for the sector from 1 September, 2021. The ERO which will become effective from 1 September 2021 revokes the one that was in place for the sector since 1 June 2017 and provides for a new pay rate of €12.05 per hour which applies from 1 September 2021 with further increases to €12.50 per hour from 1 June 2022 and €12.90 per hour from 1 June 2023. Talks began last month at the Joint Labour Committee (JLC) covering about 20,000 workers in the [contract cleaning industry on a new ERO for the sector](#). The last ERO was signed into law just four months earlier, on December 18, but unlike other recent EROs that provided for multiple increases over several years, it only provided for a single increase of 40c and the union side, represented by SIPTU, would like to see a new ERO in place by next December. Finally, [a new application for a Sectoral Employment Order \(“SEO”\)](#) has been submitted by the Connect trade union for the electrical contracting sector. The previous SEO setting minimum pay and conditions for the sector was struck out by the High Court last July. In the same judgment, all other SEOs were declared unconstitutional. While the effects of the constitutional finding on all other SEOs has been stayed pending an appeal to the Supreme Court by the Government, with a ruling expected shortly, no such stay applies to the electrical contracting SEO, which was struck out due to failings in the Labour Court’s statutory report to the Minister. IRN has reported that the application has been submitted in recent weeks. The previous SEO for the sector had arisen from simultaneous applications by the union and two of the longer-established employer bodies in the sector, the Electrical Contractors’ Association and the Association of Electrical Contractors in Ireland, but this new application was only submitted by the union. A separate SEO application has also been pending since November 2020 for the mechanical and engineering building services sector, which would cover pay and conditions for about 10,000 plumbers and pipefitters.

European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021

The [European Union \(Anti-Money Laundering: Beneficial Ownership of Trusts\) Regulations 2021](#) (the “**Regulations**”) transpose Article 31 of the Fourth Anti-Money Laundering Directive (Directive (EU) 2015/849), as amended by the Fifth Anti-Money Laundering (Directive (EU) 2018/843), into Irish law with immediate effect. The Regulations require trustees of express trusts to set up and maintain a register of beneficial owners. The trustees must take ‘all reasonable steps’ to acquire information from beneficial owners and update it accordingly in the register. The Regulations apply to express trusts but expressly exclude occupational pension schemes and a number of other trusts. Occupational pension schemes therefore will no longer be required to set up and obtain information for a beneficial ownership register, as was required under the 2019 Regulations. They also will have no obligation to file information relating to beneficial ownership with the ‘Central Register of Beneficial Ownership of Trusts’ which is established under the 2021 Regulations.



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