

Employment and employee benefits in Ireland: overview

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SCOPE OF EMPLOYMENT REGULATION

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Laws applicable to foreign nationals

While the relationship between employer and employee is primarily one governed by contract law and the parties are free to choose the law that applies to their working relationship, there are certain mandatory laws that will apply to employees working in Ireland, irrespective of the employee's nationality. These mandatory employment laws set out certain minimum protections for employees, whether the individuals concerned are Irish or foreign nationals. These laws regulate numerous areas of employment law including:

- Unfair dismissal.
- Redundancy compensation.
- Health and safety.
- Equality.
- Maternity protection.
- Adoptive and parental leave.
- Working time.

Laws applicable to nationals working abroad

Irish nationals working abroad will generally be subject to the laws of the foreign jurisdiction. However, if Irish law is the governing law of their employment contract, Irish law will apply to the contract.

EMPLOYMENT STATUS

2. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

Categories of worker

Irish law distinguishes between an individual who is an employee (that is, working under a contract of service) and an individual who is either self-employed or an independent contractor (that is, working under a contract for services). Unlike in the UK, there is no distinct concept of a "worker". However, the term does have a

particular meaning (generally inclusive of, but broader than, the term "employee") in the context of certain protective employment statutes.

As there is no single test set out in legislation for establishing whether an individual is an employee, the Irish courts and tribunals have developed a number of different criteria over the years to determine an individual's employment status. These factors will consider the reality of the relationship between the parties. No single factor will prove decisive and, therefore, each case is examined on its individual facts. However, in any employer/employee relationship, there must be mutuality of obligation between the parties (that is, an obligation on the employer to provide work and an obligation on the employee to perform work).

Entitlement to statutory employment rights

The majority of statutory employment rights apply to employees only. In addition, the tax and social insurance structure is quite different depending on whether a worker is considered to be employed or self-employed.

Time periods

The employment status of an individual is not determined by the length of time they have performed specific services. However, certain legislative rights are only acquired after a period of continuous employment, including rights to a redundancy payment and rights under the Unfair Dismissals Acts 1977 to 2007 and so on. See *Question 14* for further details of such rights and relevant time periods.

RECRUITMENT

3. Are any grants or incentives available for employing people? Does any information/paperwork need to be filed with the authorities when employing people?

Grants or incentives

The Industrial Development Agency Ireland (IDA) provides funding and grants to those considering foreign direct investment in Ireland.

Enterprise Ireland provides grants and assistance to businesses in Ireland. This includes finance towards the cost of employing key personnel and support for High Potential Start-Up businesses.

Local Enterprise Offices provide a range of financial supports designed to assist with the establishment and/or growth of businesses employing up to ten people.

A grant based incentive for employers, "JobsPlus", is available from the Department of Social Protection to employers who employ those who have been unemployed for a period of more than 12 months.

This incentive provides two levels of payment:

- A payment of EUR7,500 over two years to an employer for each person recruited who has been unemployed for more than 12 but less than 24 months.
- A payment of EUR10,000 over two years to an employer for each person recruited who has been unemployed for more than 24 months.

The Job Expansion Fund is run by Enterprise Ireland for small and medium companies supported by that state agency. The fund provides grant support up to a maximum of EUR150,000 towards the recruitment of new employees, subject to certain conditions.

A tax-based incentive called the Employment and Investment Incentive provides individual investors with, subject to conditions and restrictions, income tax relief on investments in unquoted companies up to a maximum of EUR150,000 in each tax year up to 2020. Relief is initially available to an individual at up to 30%. Up to a further 11% tax relief will be available where it has been proven that employment levels have increased at the company at the end of the holding period of three years.

A Start-up Company Relief Scheme provides relief from corporation tax on trading income (and certain capital gains) for new start-up companies in the first three years of trading subject to commencing certain trades in 2015. The value of the relief is linked to the amount of employers' Pay Related Social Insurance (Employers' PRSI) paid by a company in respect of its employees, subject to a maximum of EUR5,000 per employee and an overall limit of EUR40,000 in any year.

Filings

Employers must register with the Revenue Commissioners and make certain filings in respect of their employees. Such filings include:

- Registration as an employer, using Forms TR1, TR2 or PREM REG (depending on the circumstances of registration).
- Forms in respect of employees who commence or cease employment (Form P45s).
- Forms notifying the Revenue Commissioners of a new employee commencing or recommending where they do not have a P45 from their previous employer (Forms P46).
- Monthly, quarterly and annual PAYE, PRSI and Universal Social Contribution (USC) returns (Forms P30 and P35).

BACKGROUND CHECKS

4. Are there any restrictions or prohibitions on carrying out background checks in relation to applicants?

Employers must comply with fair collection and processing obligations under the Data Protection Acts 1988 and 2003, and prospective employees should be notified of the nature and extent of any background checks conducted during the recruitment process. Either their consent should be obtained, or the processing must be necessary in the employer's legitimate interests when balanced against the rights of the potential employee.

It is unlawful for an employer to require an employee (or prospective employee) to make a data access request and/or to require them to provide any information obtained via a data access request to the employer.

PERMISSION TO WORK

5. What prior approvals do foreign nationals require to work in your country? What information/paperwork needs to be kept or filed with the authorities when they start work?

In order to be in employment in Ireland a non-EEA national (unless exempted) must hold a valid Employment Permit. Visas are also required in advance of entry for nationals of certain non-EEA countries (visa required countries).

Visa

Procedure for obtaining approval. Persons who are of a visa required nationality must apply for a visa prior to entering the state once they have been granted an Employment Permit. Applications should be made through the Irish Embassy or Consulate in their country of permanent residence or directly to the Irish Naturalisation and Immigration Service (INIS).

Cost. The cost of a visa application processing fee varies including EUR25 for a Transit Visa, EUR60 for a Single-Entry Visa and EUR100 for a Multi-Entry Visa. Applicants from certain countries, including, among others, Jamaica, Peru, Serbia and Sri Lanka, do not have to pay a fee.

Time frame. Following a successful application for an Employment Permit, if a visa is required, an individual should apply to their local Irish Embassy/Consulate for an entry visa at least eight weeks in advance of their proposed date of entry into Ireland.

Sanctions. A person who is of a visa required nationality will be refused entry into the state if they fail to obtain the necessary visa. The Immigration Acts further provide that a person found guilty of an offence under the Acts will be liable to a fine and/or imprisonment.

Permits

Procedure for obtaining approval. Employment Permits operate in parallel with Irish immigration requirements (*see above, Visa: Procedure for obtaining approval*).

There are a variety of types of Employment Permits available and the recently introduced Employment Permits (Amendment) Act 2014 has implemented nine types of Employment Permit:

- Critical Skills Employment Permit (formerly known as Green Cards).
- Dependant/Partner/Spouse Employment Permit.
- General Employment Permit.
- Intra-Company Transfer Employment Permit.
- Reactivation Employment Permit.
- Contract for Services Employment Permit.
- Exchange Agreement Employment Permit.
- Sports and Cultural Employment Permit.
- Internship Employment Permit.

The particular type of employment permit required will differ depending on the length of the employment, the nature of the employment, salary level, skills required, or industry.

Applications are made on an official application form by either an employer or an employee to the Department of Jobs, Enterprise and Innovation.

All non-EEA nationals in possession of an Employment Permit must register with the Garda National Immigration Bureau following entry into Ireland.

Cost. The cost of an application fee for an employment permit varies depending on the type of permit being sought, but it is generally EUR1,000 up to 24 months and EUR500 for six months or less.

Time frame. Applications are processed in date of receipt order. While the processing times can vary, it is advisable to submit applications 12 weeks before the expected date of entry into Ireland.

Sanctions. The National Employment Rights Authority regularly inspects workplaces to ensure compliance with Employment Permit legislation. The Employment Permits Acts 2003 to 2014 create various offences for both employees and employers, including providing false or misleading information, and allows for the refusal and revocation of Employment Permits in certain circumstances.

Other

In addition to the Employment Permits system, certain schemes are run for employees from certain jurisdictions, certain industries or those investing in Ireland, which are usually run by the Department of Justice and include:

- **Immigrant Investor Programme.** The Immigrant Investor Programme is open to non-EEA nationals who commit to an approved investment in Ireland.
- **Start-up Entrepreneur Programme.** The purpose of the Start-up Entrepreneur Programme is to enable non-EEA nationals and their families who commit to a high potential start up business in Ireland to acquire secure residency status in Ireland. The applicant must have funding of EUR50,000 in place.
- **Business Permission.** A non-EEA national who intends to come to Ireland in order to establish a business can apply for a Business Permission. The individual must demonstrate personal investment of EUR300,000 or more.

RESTRICTIONS ON MANAGERS AND DIRECTORS

6. Are there any restrictions on who can be a manager or company director?

Age restrictions

Company directors must be over 18 years of age. There are no age restrictions on managers.

Nationality restrictions

There are no nationality restrictions. However, at least one of the directors of a company registered in Ireland must be resident in a member state of the European Economic Area (EEA). This requirement does not apply to a company that holds a bond of EUR25,000 or a statutory certificate that the company has a real and continuous link with one or more economic activities that are being carried on in Ireland.

Other

The Companies Act 2014 sets out certain restrictions on who can act as a director of an Irish company. For example, there is a prohibition on undischarged bankrupts or corporate entities acting as directors. The court can also restrict or disqualify certain individuals from acting as directors. Subject to certain exceptions, a person cannot be a director of more than 25 companies. There are

certain restrictions which apply under the Central Bank fitness and probity regime for certain roles in regulated entities. There are no set qualifications required to become a director.

REGULATION OF THE EMPLOYMENT RELATIONSHIP

7. How is the employment relationship governed and regulated?

Written employment contract

While a written contract of employment is not required, under the Terms of Employment (Information) Acts 1994 to 2012, an employer must provide its employee with a written statement setting out certain particulars of the terms of employment within two months of the commencement of that employment. Such particulars include, among others:

- Full name of employer and employee.
- Address of employer and place of work.
- Title of job or nature of work.
- Hours of work.
- Date employment started.
- Details of rest periods and breaks as required by law.

Details of paid leave and rate of pay or method of calculation of pay must also be communicated to the employee, and an employer may refer an employee to other documents in this regard. However, for ease of reference they are usually included in the contract of employment.

Implied terms

Terms can be implied into an employment contract by legislation, principles of employment law (such as the implied duty of trust and confidence) or by virtue of longstanding custom and practice in either the employer in which the employee works, or the particular industry.

Collective agreements

Collective agreements are generally not legally enforceable by the parties to them. However, the terms of such an agreement may become incorporated in a contract of employment and, therefore, be enforceable.

8. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

Both parties to a contract must consent to any change. If changes to a contract are foreseen, an employer can expressly state in the contract that it maintains the right to make variations to the contract. However, such changes must be reasonable and the employer must have a real business need for the change.

Where a contract is varied, the employee must be given the details of the change(s) in writing within one month of their coming into operation.

MINIMUM WAGE

9. Is there a national (or regional) minimum wage?

Subject to certain exceptions, the National Minimum Wage Act 2000 introduced a statutory minimum wage of currently EUR8.65 per hour over a pay reference period not exceeding one calendar month.

Formerly, legally binding agreements relating to pay were reached by trade unions and employers through voluntary bodies known as Joint Industrial Councils (JICs), or through direct negotiation of a Registered Employment Agreement (REA), which set rates of pay in particular industries. These agreements were struck down as unconstitutional in 2013. However, the Industrial Relations (Amendment) Act 2015 has amended this position by providing for both:

- The reintroduction of a legislative framework for the registration of employment agreements between an employer or employers and trade unions governing terms and conditions in individual companies.
- A new statutory framework for the establishment of orders setting minimum rates of remuneration and other terms and conditions of employment for a specified type, class or group of workers.

RESTRICTIONS ON WORKING TIME

10. Are there restrictions on working hours? Can an employee opt out on either an individual or collective basis?

Working hours

Subject to certain exceptions, under the Organisation of Working Time Act 1997 the maximum average working week is 48 hours. Hours can be averaged over a period of four months (most cases), six months, or exceptionally 12 months.

Rest breaks

The Organisation of Working Time Act 1997 requires employers to provide a rest break to employees of:

- 15 minutes where up to four and a half hours have been worked.
- 30 minutes where up to six hours have been worked (which can include the 15 minute break).

An employee is entitled to a rest period of not less than 11 consecutive hours in each period of 24 hours during which he or she works for the employer. In each seven-day period an employee is entitled to a rest period of 24 hours which must usually follow the 11-hour daily rest period.

Shift workers

Special provisions apply to night workers (that is, those who work for at least three hours between midnight and 7am and at least half of whose annual working time is night work). Employers must not permit night workers to work for more than an average of eight hours in any 24-hour period. The averaging period for night workers is two months (although longer periods are permitted in certain circumstances).

Opting-out/exemptions

There are some narrow exemptions to these requirements for certain types of employees, and in particular, the requirements above do not apply to those workers whose working time is determined by themselves.

HOLIDAY ENTITLEMENT

11. Is there a minimum paid holiday entitlement?

Minimum holiday entitlement

The Organisation of Working Time Act 1997 governs the annual leave entitlements of employees. Under this Act, an employee is

entitled to the greater of one of the following paid annual leave entitlements:

- Four working weeks in a leave year in which an employee works at least 1,365 hours (unless it is a leave year in which he or she changes employment).
- One third of a working week per calendar month where the employee works at least 117 hours in that month.
- 8% of the hours worked in a leave year subject to a maximum of four working weeks.

An employer can provide additional annual leave days to its employees but there is no obligation to do so.

If an employee has worked for a particular employer for less than the full holiday year, holidays will be granted on a pro rata basis.

Public holidays

There are nine public holidays in respect of which most employees are permitted at the option of the employer to either:

- A paid day off on that day.
- A paid day off within a month of that day.
- An additional day of annual leave.
- An additional day's pay.

This does not include employees who have not worked for their employer for at least 40 hours in total in the five weeks before the public holiday.

ILLNESS AND INJURY OF EMPLOYEES

12. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Who pays the sick pay and, if the employer, can it recover any of the cost from the government?

Entitlement to time off

There is no legislation establishing a right to sick leave. However, under the general principles of equality law, employers must provide employees with reasonable accommodation in respect of disabilities and, as such, the employer should provide a reasonable period of sick leave, but not necessarily sick pay (*see below, Entitlement to paid time off*). Under the new Workplace Relations Act 2015 statutory annual leave will now accrue during periods of certified sick leave up to a maximum of 15 months from the end of the leave year in which it was accrued.

Entitlement to paid time off

In the absence of an express term in a contract of employment, or a term implied as a result of custom and practice, an employee has no entitlement to sick pay. The employee must rely wholly upon social welfare benefits.

Some employers provide for payment of full wages for a limited period of absence due to illness or injury, subject to a refund by the employee of the state benefits received in that period.

Recovery of sick pay from the state

Illness Benefit is available for those under 66 years of age who satisfy certain social insurance conditions. No payment is made for the first six days of illness. An employee must apply for Illness Benefit within seven days of becoming ill. Other forms of benefit (for example, Disability Benefit) are available for employees on longer forms of leave. Employers are not reimbursed directly by the state.

STATUTORY RIGHTS OF PARENTS AND CARERS

13. What are the statutory rights of employees who are:

- **Parents (including maternity, paternity, surrogacy, adoption and parental rights, where applicable)?**
- **Carers (including those of disabled children and adult dependants)?**

Maternity rights

Female employees are entitled to take maternity leave of up to 42 weeks (26 weeks "ordinary maternity leave" and 16 weeks "additional maternity leave") provided the employer is given at least four weeks' notice of the commencement of that leave. The maternity leave must include at least two weeks' absence before the birth and at least four weeks' absence after the birth. An employer is not obliged to pay the employee during maternity leave, but the state provides a maternity benefit of EUR230 per week during the first 26 weeks' leave, subject to a maximum level determined from time to time by the Government. The employee is also entitled to take up to 16 weeks' additional maternity leave at her own expense.

Female employees are also entitled to attend ante-natal appointments during their working hours.

Paternity rights

There is no statutory entitlement to paternity leave, save for in the limited case of the death of the mother. Some employers do provide a period of paid leave from work for male employees following the birth or adoption of their child.

Adoption rights

Female employees, and in certain limited circumstances male employees, are entitled to take up to 40 weeks' adoptive leave (24 weeks "ordinary adoptive leave" and 16 weeks "additional adoptive leave"). Adoptive benefit is payable by the state for the first 24 weeks. No state benefit is payable in respect of the 16 weeks of additional adoptive leave.

Surrogacy rights

Where a baby is born by surrogacy, there is currently no statutory entitlement to maternity leave or pay as there is no Irish legislation at present to cover the legal issues arising from surrogacy.

Parental rights

The Parental Leave Acts 1998 and 2006 give parents the right to 18 weeks' unpaid leave for each child. The leave must be taken before the child is eight years old (subject to modifications for an adopted child or a child with a disability or long-term illness) and can be taken as a continuous period, in portions or, with the agreement of the employer, by working reduced hours.

Carers' rights

Employees who have been employed for a minimum period of 12 months can in limited circumstances take between 13 and 104 weeks' unpaid carer's leave to care for an incapacitated dependant. State carer's benefit or carer's allowance may be payable.

An employee can take force majeure leave on full pay for urgent family reasons owing to an injury or illness requiring the employee's immediate presence. The employee can take three days in any 12-month period, with a maximum of five days in any 36-month period.

CONTINUOUS PERIODS OF EMPLOYMENT

14. Does a period of continuous employment create any statutory rights for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?

Statutory rights created

Certain employment legislation requires a period of continuous employment before the employee enjoys benefits under it. For example, an employee must be in continuous employment for a period of two years before the benefits of the Redundancy Payments Acts 1967 to 2014 apply. Subject to certain exceptions, the Unfair Dismissals Acts 1977 to 2007 will only apply to an employee who has been in continuous employment for a period of 12 months. The notice of termination of employment which an employer must give to an employee increases by reference to the length of duration of employment (see *Question 19* for more details of termination of employment). The contract of employment can also provide that the employee enjoys enhanced benefits as their period of continuous service with the employer increases.

Consequences of a transfer of employee

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (as amended) govern transactions involving the sale of businesses or assets. Under those regulations, an employee's period of continuous service remains intact on a transfer of an undertaking or business (or part of that business).

FIXED TERM, PART-TIME AND AGENCY WORKERS

15. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees? To what extent are part-time workers entitled to the same rights and benefits as full-time workers?

Temporary workers

Fixed-term employees are entitled to be treated no less favourably than a comparable permanent employee unless such treatment can be justified on objective grounds. This must be based on considerations other than the status of the employee as a fixed-term employee, and the less favourable treatment:

- Must be for the purpose of achieving a legitimate objective of the employer.
- Must be appropriate and necessary for achieving that purpose.

There are also some exceptions in relation to pension entitlements. Further limitations on the use of fixed-term contracts and providing protections for fixed-term workers were introduced by the Protection of Employees (Fixed-Term) Work Act 2003 (which implements Directive 99/70/EC concerning the framework agreement on fixed-term work (Fixed-Term Work Directive)), including, in particular, rights for fixed-term employees to obtain a contract of indefinite duration in particular circumstances.

Agency workers

The Protection of Employees (Temporary Agency Work) Act 2012 affords temporary agency workers the right to equal treatment with regular workers in basic working and employment conditions as if they had been directly employed by the hirer under a contract of employment. It implements Directive 2008/104/EC on temporary agency work (Temporary Agency Work Directive).

Part-time workers

The treatment of part-time employees is governed under the terms of the Protection of Employees (Part-Time Work) Act 2001 (which implements Directive 97/81/EC concerning the framework agreement on part-time work (the Part-Time Work Directive). A part-time employee has the right not to be treated in a less favourable manner than a comparable full-time employee in respect of his or her conditions of employment (with certain narrow exceptions), unless objectively justified.

DATA PROTECTION

16. Are there any requirements protecting employee privacy or personal data? If so, what are an employer's obligations?

Employees' data protection rights

Under the Data Protection Acts 1988 and 2003, employees, as data subjects, have the right to make a subject access request and to the protections of those Acts in respect of the processing of their personal data. The right to make a subject access request entitles them, subject to certain limited exceptions, to:

- Be informed as to what personal data is held about them and to whom it is disclosed.
- Obtain a copy of their personal data.
- Have personal data amended or deleted where it is incorrect.

Employers' data protection obligations

The Data Protection Acts 1988 and 2003 regulate how employers collect, store and use personal data held by them about their employees (past, prospective and current). More onerous obligations are imposed in respect of sensitive personal data. Infringement of the Acts can lead to:

- Investigation by the Data Protection Commissioner.
- Court levied fines of up to EUR100,000.
- Compensation claims from affected employees.

DISCRIMINATION AND HARASSMENT

17. What protection do employees have from discrimination or harassment, and on what grounds?

Protection from discrimination

The Employment Equality Acts 1998 to 2011 prohibit direct and indirect discrimination on nine grounds, namely:

- Gender.
- Civil status.
- Family status.
- Sexual orientation.
- Religious belief.
- Age.
- Disability.
- Race.
- Membership of the traveller community.

There is no minimum period of service required.

Protection from harassment

The Employment Equality Acts 1998 to 2011 outlaw sexual and non-sexual harassment in the workplace. An employer is liable for acts of harassment or sexual harassment which the employee commits during the course of employment. It is a defence to show that the employer took such steps as were reasonably practicable to prevent such acts. There is no minimum period of service required to bring a claim.

WHISTLEBLOWERS

18. Do whistleblowers have any protection?

The Protected Disclosures Act 2014 provides a general framework within which a "worker" (which is a wider concept than employee) can make certain disclosures in the public interest about concerns regarding potential wrongdoing in the workplace, in the knowledge that significant employment and other protections are available. There is no minimum period of service required to bring a claim. There is also protection for whistleblowers under legislation in specific areas.

TERMINATION OF EMPLOYMENT

19. What rights do employees have when their employment contract is terminated?

Notice periods

Under the Minimum Notice and Terms of Employment Acts 1973 to 2005, minimum statutory notice periods apply to all employees who have completed 13 weeks of continuous service with the employer. The duration of statutory notice required will depend on the length of service of the employee. Currently, the following minimum notice periods apply:

- For an employee who has worked for between 13 weeks and up to two years: one week's notice.
- For an employee who has worked for between two years and up to five years: two weeks' notice.
- For an employee who has worked for between five years and up to ten years: four weeks' notice.
- For an employee who has worked for between ten years and up to 15 years: six weeks' notice.
- For an employee who has worked for 15 years or more: eight weeks' notice.

The employment contract can set out longer periods.

Severance payments

The contract of employment can provide for a severance payment, but such provisions are unusual in a contract of employment governed by Irish law. Employment contracts can sometimes provide that payment may be made in lieu of notice.

An employee is entitled however to receive payment for annual leave that he/she earned but had not taken. This payment must equal the amount that would have been paid had the annual leave been taken. Furthermore, if employment ends during the week ending on the day before a public holiday and the employee has worked for the previous four weeks, an employee is entitled to an additional day's pay for the public holiday.

Procedural requirements for dismissal

Employers must act "reasonably" and afford employees full and fair procedures in relation to any dismissal under the Unfair Dismissals Acts 1977 to 2007. Employers should have regard to the

Code of Practice on Grievance and Disciplinary Procedures (SI 146 of 2000). In order for an employer to dismiss an employee (even in circumstances of gross misconduct), the employer is required:

- To have a clear and documented procedure in place.
- To follow that procedure.

The general principles of "full and fair" procedures and "natural justice" include, but are not limited to:

- An entitlement to be accompanied to meetings.
- Access to documentary evidence.
- Compliance with the principle of proportionality.
- Confidentiality.
- Allowing employees an opportunity to respond to allegations against them.

20. What protection do employees have against dismissal? Are there any specific categories of protected employees?

Protection against dismissal

Unfair dismissal. The Unfair Dismissal Acts 1977 to 2007 provide an employee with a means of questioning the fairness of a dismissal. Under the Acts, a dismissal is automatically deemed to be unfair and the onus is on the employer to establish otherwise. A dismissal will be deemed not to be unfair if it results wholly or mainly from one or more of the following:

- The capability, competence or qualifications of the employee for performing work of the kind which he or she was employed by the employer to do.
- The conduct of the employee.
- The redundancy of the employee.
- That the employer was prohibited by statute from continuing to employ the individual in the job.
- That there were some other substantial grounds justifying the dismissal.

Wrongful dismissal. This is a dismissal in breach of contract where an employee can bring a claim in the civil courts. In certain circumstances, where an employee is dismissed with defective fair procedures, the employee may be in a position to bring a claim for an injunction seeking to be reinstated to their position.

Discriminatory dismissal. Where an employee is dismissed for one of the nine grounds of discrimination referred to in *Question 17*, they can bring a claim for discriminatory dismissal. There is no qualifying period of service. If an employee is found to have been unfairly dismissed, he/she may be placed back in his/her job, or more commonly, he/she may receive compensation for the loss of earnings caused by the dismissal.

Protected employees

Usually, an employee must have one year's continuous service with an employer in order to rely on the Unfair Dismissals Acts 1977 to 2007. However, in certain circumstances this is not necessary. This includes situations where dismissals are connected with certain specific matters, such as:

- Pregnancy.
- Religion.
- Politics.
- Race.
- Age.

- Trade union membership.

Dismissal on any of these grounds is deemed automatically unfair.

REDUNDANCY/LAYOFF

21. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs? Are there special rules relating to collective redundancies?

Definition of redundancy/layoff

Redundancy can arise in a number of different circumstances, including where an employer closes a workplace, work of a particular kind is no longer needed or where an employer can carry out the business with fewer employees or requires a different skill set for a role that an existing employee does not have.

Procedural requirements

Employers must implement redundancies fairly and for objective reasons. An employer must give at least two weeks' notice of the redundancy. This notice period increases depending on the period of service. For example, an employee who has been in employment between two and five years is entitled to a minimum of two weeks' notice while an employee who has been in employment for fifteen years or more is entitled to a minimum of eight weeks' notice. On the date of dismissal the employer must pay any redundancy payment due. The employee is entitled to reasonable paid time off during the last two weeks of the notice period in order to look for alternative work or attend training sessions.

Redundancy/layoff pay

An employee who has worked for an employer for a minimum of two years is entitled to statutory redundancy payments calculated according to their length of service and rate of pay. The payment is two weeks' normal remuneration for every year of service plus an additional one week's normal remuneration. This is subject in each case to the statutory ceiling of EUR600 per week. Incomplete years of service are taken into account on a pro rata basis. Employers can also make an *ex gratia* payment in addition to the statutory lump sum (although there is no obligation to do so), subject to the employee signing a waiver of any/all claims arising from the termination of employment.

Collective redundancies

There are special rules that apply under statute for collective redundancies. Collective redundancies arise where, during any period of 30 consecutive days, the employees being made redundant are:

- Five employees where 21 to 49 employees are employed.
- Ten employees where 50 to 99 employees are employed.
- 10% of the employees where 100 to 299 employees are employed.
- 30 employees where 300 or more employees are employed.

The employer must enter into consultations with a view to agreement with employee representatives, if this legislation is triggered. This consultation must occur at least 30 days before the notice of redundancy is given and the employer should consider whether there are any alternatives to the redundancies. In particular, the employer is required to provide specific information in writing to the employee representatives and the Minister for Jobs, Enterprise and Innovation no later than 30 days before the first dismissal is to be implemented.

More onerous consultation obligations apply in the case of exceptional collective redundancies, which are collective redundancies implemented on a compulsory basis, where the dismissed employees are to be replaced by other employees in particular circumstances.

EMPLOYEE REPRESENTATION AND CONSULTATION

22. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management representation

The Worker Participation (State Enterprises) Acts 1977 to 2001 provide for employee representation and participation at board and sub-board level in certain state enterprises. However, this is a very limited right and, in general, unless it is agreed, employees are not entitled to management representation.

Consultation

The Transnational Information and Consultation of Employees Act 1996 requires businesses with over 1,000 employees in the EEA and at least 150 employees in each of two EEA states, to establish procedures to inform and consult employees in relation to transnational matters affecting the business at EEA level. Employers are required, either on their own initiative or at the request of at least 100 employees in at least two EEA states, to establish a Special Negotiating Body for the purposes of negotiating agreed information and consultation arrangements.

Directive 2002/14/EC on informing and consulting employees (Information and Consultation Directive) which imposes further consultation obligations on businesses in Ireland with over 50 employees, has been implemented in Irish law by the Employees (Provision of Information and Consultation) Act 2006, and this imposes obligations to consult with a works council, if such a body has been established.

Where collective redundancies are proposed there is an obligation to consult (*see Question 21*). An employer must consult with employees in relation to safety, health and welfare in the workplace.

While there is no legal obligation to consult with trade unions about significant transactions, there would be an expectation from any recognised trade union that they would be consulted about any significant workforce change and this may be recorded in a collective agreement.

Major transactions

There is no legal requirement to consult with employees ahead of a share sale unless there is an agreement to do so (for example, in a collective agreement or in a works council agreement). However, best practice will be to keep employees, a works council and/or their trade union informed of the transaction so as to avoid employee unrest or industrial relations claims.

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (as amended) govern transactions involving the sale of businesses or assets. Under the 2003 Regulations the transferor and transferee must inform, and in certain circumstances consult with, the representatives of their employees that are affected by the transfer.

23. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies

An employee or their trade union (or certain others) can make a complaint of a contravention of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations

2003 (as amended). Compensation not exceeding four weeks' remuneration may be awarded for a breach of the information and consultation obligations, and compensation not exceeding two years' remuneration may be awarded for a breach of any other provision of the 2003 Regulations, as well as reinstatement or re-engagement, if appropriate.

Breaches of the Protection of Employment Act 1977, the Transnational Information and Consultation of Employees Act 1996 and the Employees (Provision of Information and Consultation) Act 2006 can result in serious criminal convictions and fines.

Employee action

Employee action cannot be used to prevent any proposals going ahead.

CONSEQUENCES OF A BUSINESS TRANSFER

24. Is there any statutory protection of employees on a business transfer?

Automatic transfer of employees

Under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (as amended) on a business transfer, the employees automatically transfer to the new entity.

Protection against dismissal

The dismissal of employees by reason of the transfer is prohibited unless this is done for "economic, technical or organisational reasons entailing changes in the workforce".

Harmonisation of employment terms

All rights and obligations arising from contracts of employment (with an exception for certain pension rights), as well as any rights under collective agreements, are automatically transferred to the transferee (purchaser). Harmonisation of employment terms can only be implemented post-transfer with the employees' agreement.

EMPLOYER AND PARENT COMPANY LIABILITY

25. Are there any circumstances in which:

- An employer can be liable for the acts of its employees?
- A parent company can be liable for the acts of a subsidiary company's employees?

Employer liability

At common law, employers are vicariously liable to employees and third parties for the acts and omissions of employees that occur in the course of their employment.

Liability can also be imposed under particular pieces of legislation. In particular, under the Employment Equality Acts 1998 to 2011, employers are vicariously liable for the discriminatory acts of employees (including harassment) committed in the course of employment, whether the acts are done with the employer's consent or knowledge or not. However, an employer can avoid liability by proving that they took reasonable steps to prevent the particular act of discrimination by the employee or acts of that description generally.

Parent company liability

The position is unclear but the general view is that a parent company cannot be held liable for the acts of the employees of its subsidiary.

EMPLOYER INSOLVENCY

26. What rights do employees have on the insolvency of their employer? Is there a state fund which guarantees repayment of certain employment debts?

Employee rights on insolvency

The appointment of an examiner or a receiver to a company does not automatically terminate existing contracts of employment. The same is true if a provisional liquidator is appointed and is given the power to continue to trade the company and proceeds to do so.

If a liquidator is appointed by the court this usually constitutes a notice of dismissal of the employees. However, if the liquidator retains employees on the same terms and conditions as the original contract the effect of the court order can be waived so that the original contract is deemed to continue.

Bankruptcy and company legislation give preferential creditor status to employees for certain debts in the distribution of the assets of a company or bankrupt. Certain employee debts, to certain limits, are given priority in the distribution of assets after the payment of the secured creditors and the liquidator's/official assignee's remuneration and expenses. However, this only offers protection where there are sufficient assets to discharge the amounts due.

State guarantee fund

The Insolvency Payments Scheme is a scheme to protect pay-related entitlements of employees whose employer has become legally insolvent as defined in the scheme. Under the scheme, employees can claim arrears of pay, holiday pay, pay in lieu of statutory notice and various other entitlements that may be owed to them by their employer, up to certain limits.

The state also has in place a parallel Redundancy Payments Scheme, under which the state will discharge the statutory redundancy entitlements of employees where the employer is insolvent.

HEALTH AND SAFETY OBLIGATIONS

27. What are an employer's obligations regarding the health and safety of its employees?

All employers are required to take steps to ensure that their employees are working in as safe an environment as is reasonably practicable. This is a high threshold set by the Safety, Health & Welfare at Work Acts 2005 to 2014 (SHW Acts). An employer must provide information in relation to health and safety to employees in a form, manner and language that is understood by employees. There is also an obligation to consult with employees on health and safety issues. In most cases, an employer must have a Safety Statement in relation to the place of work. This is a statement based upon a risk assessment specifying how health and safety should be managed there.

A criminal offence is committed where the duties imposed by the SHW Acts are breached. Employees can also bring civil claims against their employers for any loss suffered as a result of accidents at work or industrial illnesses and also claim compensation from the State Occupational Injuries Benefit Scheme.

Where an offence here has been authorised, or consented to, by a manager or a person who purports to act in such a capacity, then that person may be prosecuted.

In addition, employers have a common law duty of care to its employees to protect employees from reasonably foreseeable personal injuries.

TAXATION OF EMPLOYMENT INCOME

28. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Foreign nationals

Foreign nationals who are not domiciled but who are resident or ordinarily resident in Ireland are liable to Irish income tax on:

- Income arising in Ireland.
- Income from a non-Irish sourced employment, attributable to the performance in the state of the duties of that employment.
- Income from a foreign employment that is related to duties performed outside the state but if an individual is not domiciled in the state, this income is only taxable to the extent it is remitted or brought into the state.

An individual who is non-resident, non-ordinarily resident and not domiciled in the state for the tax year in respect of which tax liability is to be calculated will be liable to Irish tax on Irish source income and income derived from any trade, profession or employment exercised in the state.

Under the terms of a double taxation agreement an individual may be entitled to credit for foreign tax paid.

Particular rules apply to temporary assignees who may be on short term business visits to the state.

Nationals working abroad

An individual who is resident, ordinarily resident and domiciled in Ireland is liable to income tax in respect of his/her total income wherever arising.

Ireland has double taxation agreements with certain countries and it may be possible to obtain relief under one of these agreements if income tax has already been paid abroad.

Where an individual is non-resident for a particular tax year but is ordinarily resident in the state for the tax year in respect of which tax liability is to be calculated, then for that year that individual is treated in the same way as an individual who is tax resident but will not be taxable on:

- Income derived from a trade or profession no part of which is carried on in the state.
- Income derived from a non-public office or a non-public employment all of the duties (except incidental duties) of which are performed outside the state (but the position may be different for non-resident directors of Irish incorporated companies).
- Other foreign income (for example, investment income) which, in the tax year, does not exceed EUR3,810.

Special Assignee Relief Programme (SARP)

The Special Assignee Relief Programme (SARP) is designed to attract key individuals to Ireland with a view to supporting and encouraging inward investment and promoting job creation. It exempts 30% of qualifying employee's income from employment above EUR75,000 from income tax. The full amount of income earned remains subject to Universal Social Charge and Pay Related Social Insurance. Employees can also receive free of tax certain travel expenses associated with the provision of an annual trip home for the individual and their family and costs of up to EUR5,000 per child, per annum, associated with the education of their children in the state. The relief is available for up to five years and only applies to employees who come into the state up to 2017.

29. What is the rate of taxation on employment income? Are any social security contributions or similar taxes levied on employers and/or employees?

Rate of taxation on employment income

For 2015 onwards, the rate of 20% income tax applies to income up to a certain threshold. A rate of 40% applies to the remainder. These thresholds are:

- Single, widowed or a surviving civil partner without qualifying dependant children: up to EUR33,800 earned is taxed at 20%, with the remainder earned above this taxed at 40%.
- Single, widowed or a surviving civil partner qualifying for single person child carer credit (2014): up to EUR37,800 earned is taxed at 20%, with the remainder earned above this taxed at 40%.
- Married or in a civil partnership (one spouse or civil partner with income): up to EUR42,800 earned is taxed at 20%, with the remainder earned above this taxed at 40%.
- Married or in a civil partnership (both spouses or civil partners with income): up to EUR42,800 earned is taxed at 20% (which increases by a maximum of up to another EUR24,800, making the effective amount EUR67,600 taxed at 20%), with the remainder earned above this taxed at 40%.

Certain tax credits and deductions are available.

Universal Social Charge

The Universal Social Charge is a tax payable on gross income, including national pay (that is, the value of non-cash benefit, such as benefit-in-kind). The Universal Social Charge is also payable on pension contributions.

For the year 2015, Universal Social Charge is payable at the following rates:

- 1.5% on income up to EUR12,012.
- 3.5% on income from EUR12,012.01 to EUR17,576.
- 7% on income from EUR17,576.01 to EUR70,044.
- 8% on income above EUR70,044.

Social security contributions

Contributions are generally made by both employers and employees, and are made as follows for Class "A" employees:

- Employer's Pay Related Social Insurance (PRSI):
 - salary less than EUR356 weekly: 8.5%;
 - salary greater than EUR356.01 weekly: 10.75%.
- Employee's PRSI: 4% payable on salary (if earnings are greater than EUR352.01 weekly).

Reductions apply in certain circumstances.

BONUSES

30. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded?

Certain employers operate bonus schemes, which are usually provided at the employer's discretion both in respect of the award of bonuses and the continuance of the bonus scheme itself. The employee may be required to achieve certain targets in order to qualify for a bonus.

INTELLECTUAL PROPERTY (IP)

31. If employees create IP rights in the course of their employment, who owns the rights?

Employee "inventions" are covered by the Patents Acts 1992 to 2014 and the Copyright and Related Rights Acts 2000 to 2007.

Generally, any intellectual property that is created by an employee in the course of their employment in Ireland may belong to the employer. However, it is preferable for there to be an express provision in the employment contract to ensure that this is the case, and that this also includes intellectual property created during working hours.

RESTRAINT OF TRADE

32. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Restriction of activities

Provided there is no conflict with their duties to their employer, or with the express terms of a contract of employment, an employee can work for another employer during their spare time.

Post-employment restrictive covenants

Post-termination restrictive covenants are presumed unenforceable as a restraint of trade and are contrary to public policy, unless:

- They go no further than is reasonably necessary in scope, duration and geographical extent to protect an employer's legitimate proprietary interests (such as customer connections or goodwill, trade secrets or confidential information).
- They do not otherwise offend public policy.

There is no maximum period for post-termination restrictive covenants. If the covenant specifies a period that is longer than necessary to protect the employer's legitimate business interests, then the court may strike down the clause in its entirety as unenforceable. This is very much case specific depending on the facts.

A restriction of 12 months post-termination is likely only to be justified in the case of senior employees. However, even in such cases it has been found that a lesser period will be more appropriate and reasonable in the circumstances of the case. The courts will not re-write the terms of a restriction, and if they find a provision unduly broad, the entire provision may be unenforceable.

There is no requirement for an employer to continue to pay a former employee while they are subject to post-employment restrictive covenants.

PROPOSALS FOR REFORM

33. Are there any proposals to reform employment law in your jurisdiction?

The Workplace Relations Act 2015 is a very significant new piece of legislation that was passed into law with effect from 20 May 2015. This Act will transform the manner in which employment and equality disputes are dealt with in Ireland by replacing the current five employment bodies with a new two-tiered structure.

The Employment Permits (Amendment) Act 2014 reformed the employment permits system (as of 1 October 2014) to include nine different types of Employment Permit and changes to the criteria for issuing Employment Permits.

The National Minimum Wage (Low Pay Commission) Act 2015 was passed into law with effect from 15 July 2015. The legislation establishes the newly formed Low Pay Commission on a statutory basis. This independent body will make annual recommendations to the Minister for Jobs, Enterprise and Innovation on the suitability of the National Minimum Wage and other policy areas related to low pay.

The Industrial Relations (Amendment) Act 2015 provides for, among other things (see *Question 9* for further information on this Act), an improved framework for workers who seek to improve their terms and conditions in circumstances where collective bargaining is not recognised by their employer. The Act respects the voluntary nature of the Irish industrial relations system and does not require employers to engage in collective bargaining or require formal recognition of trade unions. However, the Act does provide for a mechanism for a trade union, on behalf of its members, to have disputes regarding remuneration, terms and conditions assessed against relevant comparators and determined by the Labour Court.

ONLINE RESOURCES

Revenue Commissioners

W www.revenue.ie

Description. Website containing general taxation information.

Irish Statute Book

W www.irishstatutebook.ie

Description. Irish legislation as enacted with amendments listed in the Legislation Directory.

Law Reform Commission

W www.lawreform.ie

Description. Website containing revised Irish legislation.

Basis

W www.basis.ie

Description. Website providing business access to State Information and Services.

Companies Registration Office

W www.cro.ie

Description. Central repository of public statutory information on Irish companies and business names.

Workplace Relations

W <http://www.workplacerelations.ie>

Description. Website containing information on industrial relations and rights and obligations under Irish employment and equality legislation.

Citizens Information

W www.citizensinformation.ie

Description. Website containing information on public services and entitlements in Ireland.

Practical Law Contributor profiles



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Areas of practice. Employment and employee benefits; industrial relations; dispute resolution and litigation.

Recent transactions

- Advised Bank of Scotland plc (part of Lloyds Banking Group) on the disposal by competitive auction process of its EUR1.1 billion portfolio of residential mortgage loans.
- Advised Ervia on the employment law and industrial relations aspects of the EUR1.12 billion sale of its energy business.
- Advised AerCap Holdings N.V. in relation to employment law and employee benefits issues arising in the context of its US\$7.6 billion acquisition of ILFC from AIG.

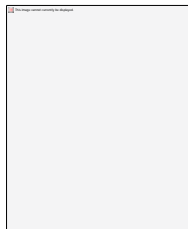
Languages. English

Professional associations/memberships

- Member of the European Employment Lawyers' Association.
- Member of the International Bar Association.
- Member of the Employment Law Association of Ireland.

Publications.

- *Lectured and written widely on all aspects of employment, equality and industrial relations law.*
- *Contributed the 2014 Irish chapter of "Global Legal Insights – Employment and Labour 2nd Edition" and the Irish chapter of "Getting the Deal Through - Labour & Employment 2014".*



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Areas of practice. Employment and employee benefits; industrial relations; dispute resolution and litigation.

Recent transactions

- Advising Aer Lingus on all aspects of the employment law and pensions law issues in relation to the Aer Lingus pension scheme.
- Advised Veterinary Ireland in relation to its successful appeal to the Supreme Court in the case of *John Barry and Others v The Minister for Agriculture and Food*.
- Advising various Irish Universities in relation to all aspects of employment law including disciplinary and dismissal issues, grievances and general queries.

Languages. English.

Professional associations/memberships

- Irish Board Member of the European Employment Lawyers Association.
- Member of the Employment Law Association of Ireland.

Publications. *Lectured and written widely on all aspects of employment, equality and industrial relations law. His latest publication is the chapter on Redundancy Law in Tottel's publication "Employment Law in Ireland".*