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Employment

Ireland

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IRELAND

Law and Practice

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Contents

1. Introduction p.3
- 1.1 Main Changes in the Past Year p.3
- 1.2 COVID-19 Crisis p.3

2. Terms of Employment p.4
- 2.1 Status of Employee p.4
- 2.2 Contractual Relationship p.5
- 2.3 Working Hours p.5
- 2.4 Compensation p.5
- 2.5 Other Terms of Employment p.5

3. Restrictive Covenants p.6
- 3.1 Non-competition Clauses p.6
- 3.2 Non-solicitation Clauses – Enforceability/Standards p.6

4. Data Privacy Law p.6
- 4.1 General Overview p.6

5. Foreign Workers p.7
- 5.1 Limitations on the Use of Foreign Workers p.7
- 5.2 Registration Requirements p.7

6. Collective Relations p.7
- 6.1 Status/Role of Unions p.7
- 6.2 Employee Representative Bodies p.8
- 6.3 Collective Bargaining Agreements p.8

7. Termination of Employment p.8
- 7.1 Grounds for Termination p.8
- 7.2 Notice Periods/Severance p.10
- 7.3 Dismissal for (Serious) Cause (Summary Dismissal) p.10
- 7.4 Termination Agreements p.10
- 7.5 Protected Employees p.11

8. Employment Disputes p.11
- 8.1 Wrongful Dismissal Claims p.11
- 8.2 Anti-discrimination Issues p.11

9. Dispute Resolution p.12
- 9.1 Judicial Procedures p.12
- 9.2 Alternative Dispute Resolution p.12
- 9.3 Awarding Attorney's Fees p.12

1. Introduction

1.1 Main Changes in the Past Year

Parental Leave

The Parental Leave (Amendment) Act 2019 came into force on 1 September 2019 amending previous parental leave legislation. Parents who have at least one year's continuous service with an employer are entitled to 22 weeks' (previously 18 weeks') parental leave in respect of a child under 12 years old (previously eight years old), or under 16 years old if the child has a disability. This leave period will be extended to 26 weeks in September 2020. There is no requirement for an employer to pay an employee for this period of leave.

Parent's Leave

The Parent's Leave and Benefit Act 2019 came into force on 1 November 2019. Parents are entitled to two weeks' leave for a child born or adopted on or after 1 November 2019. This leave must be taken during the child's first year of birth or adoption. There is no requirement for an employer to pay an employee for this period of leave, but some state benefit is payable to the employee during this period.

Disability Law

Ireland's highest court, the Supreme Court, issued an important decision in the case of Nano Nagle v Daly in 2019. This long-running case culminated in a judgment which clarifies, and arguably widens, an employer's duty to reasonably accommodate an employee with a disability under the Employment Equality Acts 1998-2015.

Sectoral Employment Orders

Sectoral Employment Orders (SEOs) allow for the setting of minimum terms and conditions that apply across entire sectors (eg, the entire construction industry). In June 2020, the High Court delivered its judgment on a judicial review case against a proposed new SEO for the electrical contracting sector. The judgment declared the system of SEOs unconstitutional.

Gig Economy

The High Court delivered a significant judgment in January 2020 in Karshan (Midlands) Limited (t/a Dominos Pizza) v Revenue Commissioners. In finding that the "contractor" delivery driver was, in fact, an employee of the company for tax purposes, the court held that it is imperative that companies do not simply adopt a "tick-box" exercise when considering the employment status of gig-economy workers, and stated that they are obliged to fully assess fact patterns on a case-by-case basis. Although this was a tax case rather than an employment rights case, it is significant as it was the first Irish case relating to employment status of gig economy workers.

Restrictive Covenants

The High Court's judgment in Ryanair DAC v Bellew in January 2020 set out useful guidance on the points a court will consider when assessing the enforceability of a post-termination restrictive covenant in the case of a senior employee with access to highly commercially sensitive information. To the surprise of many, the court rejected the company's attempt to rely on its post-termination restrictive covenants to prevent a very senior employee joining a competitor company.

COVID-19

See **1.2 COVID-19 Crisis**.

1.2 COVID-19 Crisis

As in most jurisdictions, the ongoing COVID-19 crisis and resulting containment measures has had a significant impact on the way in which work is conducted. Against a backdrop of a sudden move to remote working in non-essential work situations, a number of measures have been put in place to address health and safety considerations and supports for employers and employees.

"Lockdown" and Essential Services

On 27 March 2020, pursuant to the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020, the government imposed restrictions to combat the spread of COVID-19. This was the start of the "lockdown period". Effective Saturday 28 March 2020, everybody in Ireland was required to stay at home except in specific limited circumstances. Such circumstances included "travel to and from work, or for purposes of work, only where the work is an essential health, social care or other essential service and cannot be done from home". For businesses that were not essential services and where remote working was not an option, this typically meant layoffs or redundancies of employees. In the following months, these restrictions were gradually eased, although the government's recommendation is that persons who can reasonably work from home should continue to do so.

Lay-off/Short-time and Redundancy

Under the Redundancy Payments Acts 1967-2014, where an employer reasonably believes there is a temporary cessation or reduction in work carried out by its employees, those employees can be notified of a temporary lay-off (unpaid) or short-time working arrangement respectively. During the first few months of restrictions, these mechanisms were used by a great number of Irish employers to protect their businesses. However, the legislation entitles an employee to claim redundancy from their employer if a lay-off or a short-time situation continues for four or more consecutive weeks (or for six weeks in the last 13 weeks, of which not more than three weeks are consecutive). Redun-

dancy would have resulted in already struggling employers having to make statutory redundancy payments to such employees.

During the unprecedented COVID-19 pandemic, which had resulted in the temporary closure of a number of businesses in an effort to bring the virus under control, many employers had to lay off staff. In an effort to support employers, by keeping employees "available" to facilitate re-opening post-lockdown, the ability of laid-off employees to seek redundancy during this period was temporarily ceased via Section 29 of the Emergency Measures in the Public Interest (COVID-19) Act 2020 from 13 March 2020. This measure is currently in place until 17 September 2020 and is subject to further extension.

Payment Supports

The Irish government established three forms of payment supports: (i) the Pandemic Unemployment Payment (PUP); (ii) the Temporary Wage Subsidy Scheme (TWSS); and (iii) the Enhanced Illness Benefit (EIB).

- The PUP is a payment for employees who lost their jobs (either permanently or temporarily though lay-off) due to the crisis and will be closed to new entrants from 17 September 2020.
- The TWSS was a payment support to employers meeting certain criteria to enable them to continue paying salaries and to help keep employees in employment. The scheme ended in August 2020 and was replaced by an Employment Wage Support Scheme (EWSS) which is due to run until April 2021. Employers must register for the EWSS scheme subject to meeting the eligibility criteria.
- The EIB is a support for employees who are out of work due to contracting COVID-19 or are required to self-isolate. The EIB has been extended until March 2021.

Health and Safety

The government published the Return to Work Safely Protocol (the "Protocol") in May 2020. It includes stringent health and safety measures that employers must follow when re-opening workplaces in Ireland. The Health and Safety Authority of Ireland will act as watchdog for compliance and has the authority to inspect, issue improvement or prohibition notices, and order cessation of work. All current health and safety obligations and penalties apply too. This means that many traditional workplaces will not return to pre-COVID-19 work patterns immediately after restrictions lift and many employers will need to implement some form of flexible working arrangement to facilitate the requisite health and safety measures.

Programme for Government

While the measures set out above are temporary until the COVID-19 crisis fully abates, there are future proposed measures leading out of the COVID-19 pandemic that will be of a more permanent nature. Published in July 2020, the "Programme for Government – Our Shared Future" outlines the ambitions of the new three-way coalition government. From an employment perspective the Programme includes the following intentions.

- COVID-19 payment supports for employers through the "July Jobs Stimulus Package" and supports for employees through training, re-skilling and apprenticeships as part of the "National Economic Plan".
- In respect of remote working, the government has committed to:
  - (a) developing a remote working policy to facilitate employees working from home or from "co-working" spaces in rural areas;
  - (b) mandating public sector bodies (including colleges) to move to 20% remote working in 2021;
  - (c) accelerating the roll-out of the National Broadband Plan. High speed and reliable internet connection will be essential in ensuring that those who wish to work from home, especially those in rural communities, will have the infrastructure to enable them to do so; and
  - (d) examining the feasibility of changing the tax regime to encourage more people to work from home.
- The "Right to Disconnect": as part of a commitment to improving work-life balance, which balance was greatly exacerbated by the sudden move to remote working for many employees, the government will bring forward proposals on a right to disconnect in 2020. The Workplace Relations Commission will be brought onboard to draw up a code of practice in this area.
- Employment Opportunities for those with Disabilities: another key take-away from the Programme is the government's pledge to offer increased supports, incentives and training to allow for greater opportunities for those with disabilities to join and/or remain in the workforce.

2. Terms of Employment

2.1 Status of Employee

There is no distinction under Irish law between blue-collar and white-collar workers and such terminology would not be known in law. A person is either an employee or not an employee. Part-time and fixed-term employees are afforded statutory protection and are entitled to be treated no less favourably than comparable full-time or permanent employees. Agency workers also benefit from statutory protection in terms of their rights and entitlements. The Protected Disclosures Act 2014 introduced the broader concept of "worker" into Irish employment law in regard to whistleblowing.

Independent contractors or consultants may be deemed to be employees, regardless of the terms of their engagement, depending on the substance of the arrangement in place. There is a significant body of case law detailing the tests to be applied when determining whether such an individual has employee status and, accordingly, is entitled to take a number of employee-specific claims against the employer. This area of law is gaining particular traction in the gig-economy sector.

2.2 Contractual Relationship

Employers are required, in line with the Terms of Employment (Information) Act 1994 (as amended), to notify new hires in writing of five core terms of employment within five days of commencement of employment:

- the full name of the employer;
- the address of the employer;
- the expected duration of a temporary contract or the end-date of a fixed-term contract;
- the rate/method of calculation of the employee's pay; and
- the number of hours the employer reasonably expects the employee to work per normal working day/week.

In addition, a slightly longer written statement of key terms of employment must be provided to employees within two months of commencement.

However, this statutory information does not contain essential clauses that many employers seek, such as post-termination restrictive covenants, provisions relating to IP or confidential information, the right to pay in lieu of notice, and much more. For that reason, it is common for employers to require employees to enter into a more comprehensive written contract of employment when commencing employment.

In the case of fixed-term employees (a temporary form of contract), such employees are entitled to be informed in writing of the objective condition determining the contract (eg, the expiry date) and can include an express exclusion of the employee's right to bring an unfair dismissal claim only on the expiry of the term (or completion of a specific purpose). Where such a contract is being renewed, the employee must be informed in writing of the objective grounds justifying the renewal of the fixed-term contract on or before the date of renewal.

2.3 Working Hours

Generally, employees cannot be required to work beyond an average of 48 hours per week (usually averaged over a four-month reference period). Employees are entitled to a 15-minute break after working four hours 30 minutes, and a 30-minute break after working six hours (which may include the earlier 15-minute break). Typically, an employee is also 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 his or her employer. By way of exception, persons in control of their own working time (usually meaning very senior employees) do not receive all the same rights.

It is important that employers keep records of working time, rest breaks and annual leave in respect of their employees.

Part-time employees have statutory protection via the Protection of Employees (Part-Time Work) Act 2001 and, as such, cannot be treated less favourably than comparable full-time employees.

There is no statutory entitlement to overtime payment, unless provided for within employees' contracts of employment or under a broader collective agreement or by way of custom and practice. Under the Organisation of Working Time Act 1997, employees required to work on a Sunday are entitled to be paid a "Sunday premium".

2.4 Compensation

The National Minimum Wage Act 2000 (as amended) puts in place a statutory minimum wage (currently EUR10.10 per hour). This is reviewed at least annually by the Low Pay Commission. Certain sectors and industries have higher agreed minimum levels of pay under the terms of collective agreements usually agreed via trade union involvement. Sectoral Employment Orders had set higher minimum pay and terms in certain sectors such as construction, mechanical engineering and electrical contracting, however – as mentioned at **1.1 Main Changes in the Past Year** – a recent High Court judgment has struck down the SEO system as unconstitutional.

Any increase in employee pay is generally agreed with the employee and confirmed in writing. Unilateral reductions in pay are not encouraged and are open to challenge from employees. Like other changes to terms and conditions of employment, reductions in pay should follow a consultation process to have the best chance of defending employee claims.

2.5 Other Terms of Employment

Full-time employees are entitled to 20 paid days' annual leave in a particular leave year. In addition there is an entitlement to nine public holidays provided as follows by the employer: a paid day off on that public holiday; or a paid day off within a month of that day; or an additional day of paid annual leave; or an additional day's pay. Part-time employees have similar entitlements, and the legislation sets out certain formulae to calculate employees' entitlements. Employees must be given the greater of:

- four working weeks in a leave year in which he or she works at least 1,365 hours (unless it is a leave year in which he or she changes employment); or
- one-third of a working week for each month in the leave year in which he or she works at least 117 hours; or
- 8% of the hours he or she works in a leave year (but subject to a maximum of four working weeks).

There are several types of family leave available to eligible employees in Ireland:

- maternity leave (42 weeks, comprised of 26 weeks' maternity leave and 16 weeks' additional maternity leave);
- paternity leave (two weeks);
- parental leave (currently 22 weeks, increasing to 26 weeks in September 2020, per child up to the age of 12 subject to certain exceptions);
- parent's leave (two weeks);
- adoptive leave (40 weeks, comprised of 24 weeks' adoptive leave and 16 weeks' additional adoptive leave);
- carer's leave (104 weeks);
- force majeure leave (three days in any 12-month period or five days in a 36-month period).

While employees availing of the foregoing leaves may be entitled to applicable state payments, it is at the discretion of the employer whether to "top up" those benefits during the period of family leave. The only exception to this is force majeure leave, which is paid by the employer.

Employees are not automatically entitled to be paid during periods of sickness absence. An employer has a discretion to provide, via the employment contract and/or sickness absence policy, for company sick pay during periods of certified absence. The employee may be entitled to social welfare illness benefits payable by the state.

3. Restrictive Covenants

3.1 Non-competition Clauses

Although a non-compete clause is a restraint of trade and therefore prima facie unlawful, the Irish courts have determined that it will be allowed and enforced where it is drafted reasonably and goes no further than is necessary to protect the legitimate business interests of the employer. This means that the subject matter, the geographical scope, and the duration of the clause must be reasonable. Generally, 12 months is seen as the maximum duration that will be enforced.

Because of the potentially serious consequences for an employee not being able to work in their area of expertise for a period of time, the courts tend to require a convincing argument to enforce non-compete clauses (versus non-solicitation clauses, for example), though evidence of employee wrongdoing such as the taking of confidential information greatly strengthens an employer's case.

Where a non-compete clause is included in the employment agreement at commencement, there is no requirement for independent consideration. Nor is there a requirement that the employee receive any payment during the duration of the covenant itself. If a non-compete clause is included later in the relationship, or in a termination agreement, for example, consideration is required although there is no set level for what this must be.

The December 2019 case of Ryanair DAC V Peter Bellew received much publicity because of the high-profile parties involved. Despite the employee being of a very senior level, the High Court ruled that the clause in his employment contract restraining him from working with any other airline for 12 months post-termination of employment was unenforceable due to its broad drafting. This illustrates how carefully and narrowly non-compete clauses must be drafted.

3.2 Non-solicitation Clauses – Enforceability/Standards

Non-solicitation clauses are treated in much the same way as non-compete clauses in Ireland, as referred to above, and the same tests generally apply – ie, drafted reasonably and going no further than is necessary to protect the legitimate business interests of the employer.

It is permissible to restrict a departing employee from soliciting the employer's customers and employees, and this type of restrictive covenant tends to be more readily enforced by a court than non-compete clauses for example. A 12-month restriction is also the maximum that will be enforced. Independent consideration is not required when the clause is included in the employment contract at the time of signing, and there is no requirement to provide any ongoing payment to the employee during the period of the restriction.

4. Data Privacy Law

4.1 General Overview

Like most EU countries, the General Data Protection Regulation (GDPR), governs Ireland's employment data privacy laws together with the Data Protection Acts 1988–2018 (the Acts). Constitutional requirements and precedent through case law in Ireland are also important sources of data privacy law.

The GDPR and the Acts confer responsibilities on employers as data controllers/processors of their employees' data. These responsibilities include the employer having a legitimate reason and legal basis for gathering and retaining employee data, and clearly outlining to employees how their data is retained and stored (through a data protection policy and employee privacy notice). The key principles for employers are listed in Article 5 of the GDPR.

Employees have rights including protection over how their data is handled by employers, rights of erasure of data and rights for making data subject access requests. This latter right to make a "data subject access request" is increasingly being used by employees in contentious scenarios in order to obtain useful information they might not ordinarily have received in a litigation process.

5. Foreign Workers

5.1 Limitations on the Use of Foreign Workers

Foreign workers in Ireland can be broken into three groups; (i) citizens of the European Economic Area (EEA); (ii) citizens of the UK; and (iii) citizens of other countries. Any limitations that apply to the use of foreign workers depend on the category.

Citizens of the EEA

Citizens of the EEA and Switzerland and their families may come to Ireland to live and work with no limitations for three months under the European Communities (Free Movement of Persons) Regulations 2015. After three months, this category of workers can stay in Ireland to live and work with no limitations if they remain in employment (non-workers have other thresholds to meet). Non-EEA/Swiss family members may have to register their residence in Ireland after three months.

Citizen of the UK

Citizens of the UK, as citizens of the EEA, had the same rights as outlined above pre-Brexit. These rights still apply during the Brexit transition phase (due to expire on 31 December 2020). Following the UK's complete exit from the EU from 1 January 2021, UK and Irish citizens will continue to enjoy similar rights under the longstanding bilateral "Common Travel Area" arrangement agreed by Ireland and the UK, which means that UK citizens can still work in Ireland without limitation.

Citizens of Other Countries

Citizens of countries other than the EEA, Switzerland or the UK are limited in their ability to work in Ireland. All of these foreign workers must secure permission to work in Ireland and must also register their residence in Ireland. Citizens of some countries will also require visas to enter Ireland. There are various employment permission or permit options open to these foreign workers to work in Ireland. The most common are the General Employment Permit, the Intra-Company Transfer Employment Permit, the Atypical Permission and the Critical Skills Employment Permit. All of these are useful for different circumstances and will give foreign workers different rights and obligations while they work in Ireland.

5.2 Registration Requirements

Under the Immigration Act 2004, any foreign worker in Ireland not a citizen of the EEA, Switzerland or the UK must register residence with the Irish immigration authorities and will be given an Irish Residence Permit on successful registration.

It is not necessary for foreign workers to register their employment permit, but they must update the authorities on any changes to the terms governing their employment permits such as pay, location of work or home address.

6. Collective Relations

6.1 Status/Role of Unions

Trade union membership in Ireland has never been exceptionally high, and it has seen a slow but steady decline in the recent past. The numbers vary depending on the report, but it is generally agreed that Ireland's union density overall dropped to circa 25% in 2017 compared to circa 36% in 2003. Trade union membership is far higher in the public sector than in the private sector.

Trade unions are membership-based organisations and are formed to protect the rights and interests of their members, to negotiate terms and conditions of employment and to provide information and assistance to their members. Trade unions are required to register under the Trade Union Acts 1871-1990 and to hold a negotiation licence where they wish to negotiate with employers in relation to the fixing of wages or other conditions of employment.

The fundamental right to join (or not to join) a trade union is enshrined in the Irish Constitution. Article 40 of the Constitution guarantees the rights of the citizens to form associations and unions. This right is reinforced by Irish employment legislation which ensures that employees cannot be dismissed or discriminated against due to their membership of a trade union. Notably, Ireland operates a "voluntarist" industrial relations system, and the Irish Constitution does not oblige an employer to recognise, deal with, or otherwise engage with an association or trade union which seeks to represent employees' interests. There is no mechanism in place to compel an employer to recognise a trade union or to deal with employee representatives.

Disputes regarding terms and conditions of employment can be referred to the Labour Court for investigation under industrial relations legislation (though separate rights exist for employees to proceed under employment rights legislation). The Labour Court can investigate specific issues and issue recommendations in this regard, though these are typically non-binding.

Although there is no right to strike per se, the Industrial Relations Acts 1946-2019 provide certain protection or "immunities" for industrial action, provided specific conditions are met, and strikes and other industrial action are neither common nor rare.

The Industrial Relations (Amendment) Act 2015 established an improved framework for workers to enhance their terms and conditions of employment where employers do not engage in collective bargaining. Where a dispute is brought to the Labour Court in this regard, the Labour Court can issue a recommendation and/or determination. Although recommendations issued by the Labour Court concerning the investigation of disputes under the Industrial Relations Acts 1946-2019 are usually not binding, in this circumstance it is possible for a non-recognised union to obtain a binding determination on behalf of its members.

6.2 Employee Representative Bodies

Work councils are not common in Ireland, although legislation exists to allow their creation (including legislation concerning transnational works councils). Many employers instead establish and engage with a non-legislative employee information and consultative forum. These are established to inform and consult employees on matters which directly affect them.

The Employees (Provision of Information and Consultation) Act 2006 provides a mechanism by which employees can require employers to put in place a system for formal consultation and information provision through elected employee representatives. This applies to undertakings with at least 50 employees. A total of 10% of the employees must formally request to be informed and consulted with. Following this, the election of employee representatives to an employee information and consultative forum will be made and negotiations can then commence.

Furthermore, the Protection of Employment Acts 1977 to 2014, which deals with collective redundancies, and the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, which deals with TUPE transfers, provide for a requirement to inform and consult with employee representatives in relation to those matters.

6.3 Collective Bargaining Agreements

As above, Ireland operates a voluntarist industrial relations system: while employees have a constitutional right to join a union, employers are not obligated to negotiate with those unions on a collective basis and can maintain a stance that it does not recognise trade unions for collective bargaining purposes.

Collective bargaining in Ireland is defined in the Industrial Relations (Amendment) Act 2015 (the 2015 Act) as "voluntary engagements or negotiations between any employer or employers' organisation on the one hand and a trade union or excepted body to which this Act applies on the other, with the object of reaching an agreement regarding working conditions or terms of employment, or non-employment of workers". An "excepted body" in this instance must be independent (ie, not established or funded by the employer).

The 2015 Act provides for a system whereby disputes can be referred collectively in certain circumstances where it is not the practice of the employer to engage in collective bargaining, a trade dispute exists, the number of workers involved is not "insignificant" and the internal dispute resolution procedures have failed to resolve the dispute.

The 2015 Act also reintroduced sector-wide terms and conditions through Sectoral Employment Orders (SEOs). These establish a floor of minimum employment rights in particular sectors of the economy, such as the construction sector and the electrical contracting sector. However, the 2015 Act was declared unconstitutional and was struck down in a recent High Court decision, which means that all SEOs created under the 2015 Act are now void. This decision is open to appeal. (See **1.1 Main Changes in the Past Year**.)

7. Termination of Employment

7.1 Grounds for Termination

Termination

Ireland does not have "at will" employment. Therefore, in addition to having to comply with applicable notice and other contractual entitlements (see below), the dismissal of an employee will be deemed to be unfair by the Workplace Relations Commission (the WRC) if it is challenged by the employee, unless:

- there were substantial grounds to justify the dismissal; and
- fair procedures were followed when effecting the dismissal.

Employees with more than one year's continuous service with an employer have the right not to be unfairly dismissed and can claim unfair dismissal within six months (extendable to 12 months in exceptional cases) of the dismissal. There are excep-

tions to the one-year service requirement, such as in cases of dismissal due to trade union membership, pregnancy, or on account of whistleblowing. The awards can potentially be large and the WRC has the power to order reinstatement, re-engagement and/or compensation of up to two years' remuneration.

Reasonable Grounds Justifying Termination
Dismissals will be deemed to be unfair by the WRC if challenged by the employee, unless they are based on one of the following grounds.

Capability
This refers to an employee's ability to carry out the work that he or she is employed to do and includes, for example, an employee's long-term or intermittent sickness absence.

Competence/qualifications of the employee
An employee can be dismissed for poor performance (eg, failure to meet reasonable targets, recurring complaints, etc).

Conduct
An employee may be dismissed for misconduct. While there is no statutory definition of misconduct, it will involve actions or omissions falling short of "gross misconduct"; see **7.3 Dismissal for (Serious) Cause (Summary Dismissal)**. Examples of misconduct include lateness for work, breach of trust and confidence, theft, breach of company policies, assault (verbal or physical), and failure to follow reasonable instructions. However, the question of whether the incident in question is simple misconduct or the more serious gross misconduct is very much fact-dependent.

Redundancy
A redundancy dismissal will occur where an employer terminates an employee's employment for objective reasons (eg, due to a business or workplace closure or as a result of a reduced requirement for employees). A redundancy situation is impersonal – it will exist irrespective of an employee's individual capability or conduct.

Other substantial reasons
These are not defined but can include for, example, when the employer is prohibited by statute from employing the employee or a breach of health and safety policies.

Constructive Dismissal
This can occur where an employee terminates his or her contract of employment due to the conduct of the employer. The conduct must have been such that it would have been reasonable for the employee to terminate the contract of employment. As such, employers can still be at risk of a claim even where an employee resigns.

Fair Procedures
In order to effect a fair dismissal, the employer must follow a fair process to be adopted by the employer in advance of the termination. Different fair procedures should be followed depending on the ground for dismissal, as detailed below.

Capability
A decision to dismiss an employee on the grounds of capability should not be taken before considering whether there are appropriate measures which the employer could take to support the employee to carry out his or her duties. The employee should be consulted with in this regard and the employer should review whether there are any reasonable adjustments that could be made to prevent the dismissal.

Competence
If the employer is dismissing on the grounds of competence, a fair process would involve:

- assessing the employee's performance;
- giving the employee an opportunity to improve;
- allowing a reasonable period of time for improvement; and
- providing appropriate support and training.

A performance management process can take several months and should be engaged before dismissing an employee.

Conduct
In addition to any company policy in this regard, the Industrial Relations Act 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order 2000 sets out the procedures that should be followed in a disciplinary process. Although this code is not legally binding, it can be used as evidence in an employee claim.

Generally, the employee should:

- receive a copy of the complaint against him or her in writing;
- be invited to a disciplinary hearing/meeting following an investigation;
- be provided with the opportunity to be heard;
- be afforded with the right to avail of representation (either by a colleague or a trade union) in certain instances;
- be afforded to a right to a fair and impartial determination of the issues concerned; and
- be afforded with a right to appeal any decision made against them.

Generally, the procedures allow for informal warnings which can escalate to formal warnings and ultimately dismissal. How-

ever, there may be instances where more serious action, including dismissal, is warranted at an earlier stage.

Redundancy
Generally, a fair process involves warning the employee of the redundancy situation, undertaking a one-to-one consultation process and considering any available alternatives to dismissal.

An employer must engage in collective consultation if the number of employees dismissed within any period of 30 consecutive days exceeds the relevant threshold set out in the Protection of Employment Acts 1977 to 2014. This duty arises where the employees being made redundant in one establishment number:

- at least five employees in an establishment normally employing more than 20 and less than 50 employees;
- at least ten employees in an establishment normally employing at least 50 but less than 100 employees;
- at least 10% of the number of employees in an establishment normally employing at least 100 but less than 300 employees; or
- at least 30 employees in an establishment normally employing 300 or more employees.

Where the duty to collectively consult is engaged, the employer must consult with employee representatives at least 30 days before the first dismissal takes effect. The employer must also inform the appropriate government minister by way of letter of the proposed collective redundancies at least 30 days in advance of the first dismissal taking effect.

7.2 Notice Periods/Severance

Notice Requirements
The Minimum Notice and Terms of Employment Acts 1973-2015 regulate statutory notice in Ireland. Employees are entitled to a minimum of one week and a maximum of eight weeks of statutory notice, depending on his or her length of service with the employer, and provided they have at least 13 weeks of continuous service with their employer.

The statutory minimum notice periods from an employer to an employee are:

- continuous service for 13 weeks but less than two years – one week's notice;
- continuous service for two years or more but less than five years – two weeks' notice;
- continuous service for five years or more but less than ten years – four weeks' notice;
- continuous service for ten years or more, less than 15 years – six weeks' notice;
- continuous service for 15 years or more – eight weeks' notice.

Employees are entitled to the greater of either their statutory notice entitlement or their contractual notice entitlement.

Importantly, the minimum notice an employee must provide to the employer is only one week, and for this reason most employers will require employees to agree to a longer notice period by way of contract of employment.

Employment contracts will also generally set out certain circumstances where an employee can be dismissed without notice (see **7.3 Dismissal for (Serious) Cause (Summary Dismissal)**).

Where an employer does not comply with the notice provisions set out in the contract of employment, the employee can sue for wrongful dismissal for the outstanding notice period.

Employees can also be paid in lieu of notice where this is expressly provided for in the employment contract or agreed between the parties at termination. In addition, employees can be placed on "garden leave" (ie, still employed but not required to attend at the office) only if specifically included in their employment contract.

7.3 Dismissal for (Serious) Cause (Summary Dismissal)

Summary Dismissal
Employers can terminate an employee's employment without notice, or payment in lieu of notice, where there is gross misconduct justifying the dismissal. Summary dismissal will only be justified in instances of extreme misconduct. Even so, employers are required to follow fair procedures before implementing the dismissal.

7.4 Termination Agreements

Termination Agreements
Employees can waive most claims connected to their employment and its termination vis-à-vis their employer by way of a termination agreement (also known as a severance agreement, waiver agreement, settlement agreement, waiver and release agreement). Four conditions are required for a valid waiver of claims in a termination agreement:

- the agreement must be in writing;
- there must be consideration (although execution as a deed is also commonplace);
- the agreement must list the legislation under which claims are being waived; and

- the employee must be provided with the opportunity to seek advice on the agreement, although it is not required that he or she actually seek such advice.

Other than a statutory redundancy payment, legislation does not oblige employers to make termination payments to employees. However, employees will expect an "ex gratia" termination payment in return for their signing of a termination agreement waiving claims. There is no set amount for this ex gratia payment and it is a matter of negotiation between the parties.

Although termination agreements can waive most claims connected to employment and termination, they are not without limitation. There are some claims that cannot be waived by way of a settlement agreement, such as those connected with any future claims the employee may have and any claim an employee has in relation to his or her employer's statutory data protection obligations. Employees also cannot be prevented from making a protected disclosure (whistleblowing) via a termination agreement.

7.5 Protected Employees

Some workers are further protected against dismissal, as explained below.

According to the Employment Equality Acts 1998-2015, employees may not be dismissed on any one of the following nine grounds: age, disability, gender, family status, civil status, sexual orientation, race, religion and membership of the traveller community.

The Protected Disclosures Act 2014 provides that an employee can be awarded compensation up to a maximum of five years' remuneration (limited to actual financial loss) where he or she has been dismissed for having made a protected disclosure.

Dismissal of an employee based on his or her engagement in industrial action is automatically deemed to be unfair.

Dismissal of an employee by a reason relating to an employee's pregnancy or breastfeeding or availing of maternity leave, paternity leave, carer's leave, force majeure leave, adoptive leave or parental leave, is automatically deemed to be unfair.

Part-time and fixed-term employees are afforded additional protection under the Protection of Employees (Part-Time Work) Act 2001 and Protection of Employees (Fixed-Term Work) Act 2003 respectively so that they cannot be treated less favourably than full-time employees.

Agency workers are afforded the right to equal treatment in basic working and employment conditions under the Protection of Employees (Temporary Agency Work) Act 2012.

8. Employment Disputes

8.1 Wrongful Dismissal Claims

As per **7.1 Grounds for Termination**, with some exceptions statutory dismissal protection only applies after 12 months of service. However, an employee is protected from discriminatory dismissal (on protected equality grounds) and dismissal for making protected disclosures from day one of employment. If the statutory dispute body (the Workplace Relations Commission (WRC)) decides that the dismissal was unfair (ie, without lawful cause and/or procedurally flawed), an employee can be re-instated, re-engaged or awarded up to two years' remuneration subject to financial loss.

However, as an alternative to this "employment claim", it is open to the employee to take a wrongful dismissal claim, a breach of contract claim, or seek injunctive relief before the civil courts depending on the circumstances of the dismissal. The grounds for this claim are usually that the notice period has not been properly provided, some other contractual term has been breached, an express or implied contractual term has been breached through fair procedures not being followed, or constitutional natural justice has not been followed.

In such circumstances, employees may request that the court restrain their dismissal by way of an injunction, until the matter in dispute can be heard by the court. The test applied by the court is usually threefold:

- the employee must demonstrate a strong case that he or she is likely to succeed at the hearing of the primary claim;
- damages alone are not an adequate remedy; and
- the "balance of convenience", when weighing up the interests of the parties, favours the granting of an injunction.

A wrongful dismissal claim itself results in the award of damages at a level determined by the court.

8.2 Anti-discrimination Issues

Claims of employment discrimination and/or discriminatory dismissal are grounded in the Employment Equality Acts 1998-2015. As per **7.5 Protected Employees**, legislation in Ireland protects nine grounds: age, disability, gender, family status, civil status, sexual orientation, race, religion and membership of the traveller community.

The burden of proof is initially on the employee to make out a prima facie case of discrimination at which point the burden will transfer to the employer to disprove on the balance of probabilities. By way of redress, the WRC may order reinstatement, re-engagement or compensation of up to two years' remuneration per head of claim not based on financial loss. A claim can be made in respect of an act of discrimination, a discriminatory dismissal, and/or victimisation based on an allegation of discrimination.

9. Dispute Resolution

9.1 Judicial Procedures

The majority of employment-related claims are heard by specialised employment forums: the Workplace Relations Commission (WRC) in the first instance, and on appeal to the Labour Court. These forums were created by statute, as opposed to the superior/civil courts which were established by the Constitution. In certain industrial relations matters parties can refer disputes directly to the Labour Court.

The purpose of a separate system for employment claims is to enable employees to access justice more speedily, more informally and with less expense. The rules and procedures of the WRC and Labour Court are less complex than the civil courts, though it is still commonplace for both employer and employee parties to be represented by lawyers or a trade union representative.

A very limited set of employment claims can be heard in the first instance in the civil courts. Breach of contract claims are also heard in the civil courts, which would include breach of an employment contract. The importance of this is that employees may seek an injunction in the civil courts to restrain their dismissal in breach of contract or to restrain other breaches of contract (such as an allegedly flawed disciplinary procedure).

There is no formal class action procedure in Ireland, and the closest thing available would be multi-party litigation that proceeds by way of a test case or a representative action. This would be rare in an employment law context in Ireland. It is also worth noting that third-party funding of litigation is still unlawful in Ireland in most circumstances and that the rules of "maintenance" and "champerty" still pertain.

Although Ireland is a common law legal system, and the "adversarial" system is prevalent in the civil courts, the WRC and Labour Court are more of a hybrid, with both adversarial and inquisitorial elements. The Irish legal profession is also divided into barristers and solicitors, with barristers specialising in advocacy before the courts on specific matters once engaged by a solicitor, while solicitors maintain day-to-day relationships with clients, advising on matters generally and advocating before the courts much less frequently.

9.2 Alternative Dispute Resolution

The Arbitration Act 2010 expressly provides that it does not cover arbitration of any matters relating to the terms or conditions of employment or the remuneration of any employees. For that reason, arbitration of employment matters is rare, because parties would not have the benefit of the powers and guidance provided by the Arbitration Act 2010.

Nevertheless, alternative dispute resolution (ADR) is commonplace with mediation between parties being the most common method of resolving employment issues through ADR. This mediation is either provided by the WRC itself, or organised privately by parties.

From an industrial relations law standpoint, the Labour Court will occasionally intervene in industrial relations disputes, whether invited by parties, on its own initiative, or at the invitation of the government, to try to reach a resolution between the parties outside of the statutory dispute referral procedure.

9.3 Awarding Attorney's Fees

In the employment forums mentioned above (the WRC and the Labour Court) each party bears its own costs, and there is no power to order that the losing party pay the costs of the prevailing party. In the civil courts, however, the general rule is that "costs follow the event", meaning that typically the successful party is entitled to recover costs (such as certain legal fees) from the other party. These costs are agreed between the parties or, failing that, referred to the Office of the Legal Costs Adjudicator for a decision. Until recently, this adjudication was referred to as the "taxation of costs" and was carried out by the Taxing Masters Office, but the issues had nothing to do with revenue or taxation and the name was amended to avoid confusion.

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William Fry is one of Ireland's biggest law firms, with more than 310 legal and tax professionals and approximately 500 total staff. It is a full-service law firm and ranked by international directories, clients and market commentators alike as being a leader in each of its fields of work. Its head office is in Dublin, and it also has offices in Cork, London, New York, Silicon Valley and San Francisco (all practising Irish law), as well as an alliance with one of Northern Ireland's largest law firms through which it can provide an all-island solution. The firm's employment and benefits department is one of the largest in Ireland, offering high-quality advice on complex employment issues. The team includes dedicated experts in health and safety, share options and benefits, TUPE, pensions, corporate immigration and regulated financial services, in addition to the expertise of other related specialist departments, such as data protection, competition and tax.

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