

Employment & Employee Benefits

# Suspension of an Employee

*“The suspension of an employee, whether paid or unpaid, is an extremely serious measure which can cause irreparable damage to his or her reputation and standing.” – Reilly, J.*

The impact that a suspension could have on an employee was considered in a case last year the High Court. It is common for employers, once a decision has been made to commence an investigation into employee misconduct, to suspend the employee with pay. Often the decision is a reflex response to an allegation of serious misconduct.

### **Bank of Ireland v Reilly**

In *Bank of Ireland v Reilly*, the employee was suspended by his employer arising from allegations regarding improper use of his email. He was suspended for approximately 3 months pending an investigation and disciplinary process which resulted in his dismissal.

Mr. Reilly initiated a claim before the Employment Appeals Tribunal which was appealed to the High Court.

### **Was Suspension Necessary?**

The Court held that the Bank had not produced any evidence to show why it was necessary to suspend Mr Reilly and did not offer the employee an opportunity to respond to the allegations. The Court also held that the employee should have been advised of the basic reason for his suspension.

While the manner of his suspension was not the only factor in determining the case in his favour, the Court believed that it was indicative of an intention to make an example of the employee.

### **Serious effect of Suspension – ‘no smoke without fire’**

Commenting on the decision to suspend Mr Reilly at the commencement of the disciplinary investigation, the Court noted the serious effect that suspension can have on an employee’s career.

- Suspension is an extremely serious measure
- Suspension can cause irreparable damage to a reputation
- Suspension, potentially, is capable of causing a ‘significant blemish’ on one’s record and subsequent career

The Court noted that the evidence in this case was that a wide range of rumours and reports had circulated about the employee - ranging from him possibly being involved in fraud to participation in a tiger kidnapping.

### **Not to be taken lightly**

The Court went on to state that a suspension should not be imposed lightly and only after full consideration of the necessity for it, pending a full investigation of the conduct in question. The Court held that a suspension will normally be justified if it is seen as

- (a) necessary to prevent a repetition of the alleged misconduct
- (b) that it will prevent interference with evidence
- (c) that suspension will protect persons at risk from such conduct
- (d) that it will protect the employer’s own business and reputation

Suspension ought to be seen as a measure designed to facilitate the proper conduct of the investigation and any consequent disciplinary process.

The employee in this case was reinstated to his position six years after his dismissal which is stark reminder to employers of the remedies available to the Workplace Relations Commission and the Courts.

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