

Employment & Employee Benefits Group

Enforcing Employment Compliance

Fixed Payment Notices – A New Approach to Enforcing Employment Compliance

New penalties for breaching employment law

One of the most striking features of the proposed Workplace Relations Bill, 2014 is the move towards empowering Workplace Relations Commission inspectors to issue fixed payment notices for stated workplace offences. Similar to road traffic fixed penalty notices inspectors will have a right to impose an immediate penalty of up to €2000 for the breach. This “on the spot fine” approach significantly increases the powers of the inspectors.

Stated offences

This approach is limited to stated offences where there is already a statutory fine for breach. This applies to failure to:

- initiate collective redundancy consultations in time;
- provide payslips showing deductions from wages; and
- confirm hourly rates of pay as required by the National Minimum Wage Act 2000.

Generally compliance or otherwise with such requirements can be readily established from an employer’s records.

New approach

The key difference in the approach signalled by the Bill is that rather than waiting for an aggrieved claimant to file a claim for breach of legislation the inspectors may take the initiative and issue a fixed payment notice.

The penalty will, if paid within 42 days, be a defence by the employer to any prosecution. While the possibility of summary prosecutions has long been a feature of employment legislation such prosecutions rarely happen.

The carrot and the stick

Effecting compliance by the service of notice is a feature of health and safety inspections, where the inspector has the right to issue an improvement notice followed by a prohibition notice. Similar rights have now been given to the newly merged Irish Human Rights and Equality Commission which can, following an inspection serve an equality and human rights compliance notice. The objective in such notices is to allow the respondent to achieve compliance before more penal steps are taken (including prosecution).

While the fixed payment notice regime is intended to serve a similar purpose its effect is more immediate and draconian. Essentially the employer’s choice is to pay the fixed payment and avoid or minimise the risk of a summary prosecution or to refuse to pay and face prosecution.

Legislative process

The Workplace Relations Bill is currently before the Oireachtas. The introduction of a system for fixed payment notices has been a constant feature of the proposals during the pre-legislation consultation process. As the legislation evolves the list of offences to which fixed payment notices relate may change. The advent of the fixed payment notice scheme appears to signal an intention by the Government to ensure that enforcement of basic employment rights is achieved without the inherent delays and inconsistencies involved in individual claims.

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