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Employment Law

Irish Supreme Court declares collective wage setting mechanism to be unconstitutional

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In a decision delivered on 9th May 2013, in the case of *McGowan and others -v- the Labour Court and others* the Irish Supreme Court has declared unconstitutional a wage setting mechanism which has formed the backdrop to Irish industrial relations law and practice since 1946. This decision is highly significant as it calls into question the method by which wages and other benefits (including pensions) have been set on a collective basis across many sectors.

A key feature of Irish industrial relations law and practice to date has been the method by which in certain sectors of the economy, such as construction, electrical contracting and catering, wages and terms and conditions of employment are prescribed on a collective basis and are legally binding on all employers in the relevant sector. Registered employment agreements (REAs) are negotiated and agreed by participants to a joint labour committee (JLC) (representatives of the main unions and employers in the industry), registered by the Labour Court and then become legally binding (with potential criminal sanctions for breach) on all employers and employees working in the relevant sector. Supporters of the system point to the fact that wages are set at a minimum level, protecting employees in industries where employment is often transient and short-term. Another advantage of the system is that industrial peace has been largely maintained as a result of a centralised wage setting mechanism avoiding the risk of localised disputes. Critics of the system have pointed to the fact that employers, who were not represented in the JLC, could find themselves bound by minimum rates of pay – affordable in the larger employers but uneconomic for smaller employers within the sector.

The first major cracks in the system arose as a result of the High Court decision in 2011 in the case of John Grace Fried Chicken –v- Labour Court where the High Court held that the provisions of the 1946 Industrial Relations Act relating to a similar wage setting mechanism in the catering industry was repugnant to the Constitution. This led to new legislation being introduced in 2012 which maintained the JLC and REA system but allowed for processes by which affected firms would have the right to challenge the applicability of the relevant agreement to them and afforded the right to make representations as to the applicability of the agreement on grounds for example of inability to pay.

The Supreme Court, in the case of McGowan, has determined that the REA system is unconstitutional on grounds that the delegation to a negotiation body such as a JLC of the power to set legally binding standards for a sector is unlawful. The Court in its judgment recognised the unfairness of employers being bound automatically by (and at risk of criminal prosecution for breach of) a system into which many of them had no input. The effect of this decision is that many employers and employees who have already incorporated the terms of the REA into their contractual relationship will continue to be bound by the terms agreed. But for the future, the Labour Court will lose the power to enforce minimum wage and terms of employment in the affected sectors. This will lead to increased local bargaining and may, pending further legislative clarification, lead to a reduction in wage rates for future employees employed in some of sectors in the economy which have experienced the harshest pressures as a result of the recession.

Please contact Maura Connolly, Partner (mconnolly@efc.ie) or any member of the Employment & Employee Benefits Group in Eugene F. Collins Solicitors for further information on this topic or any other aspect of Employment Law.

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