

Employment and Employee Benefits Group

Workplace dispute resolution procedures overhauled

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Workplace Relations Commission Act 2015 becomes law

The long awaited Workplace Relations Commission Act 2015 became law on 20 May 2015. The effective date for the Act is 1 October 2015. There will be a transfer to the Workplace Relations Commission (“WRC”) of the Employment Appeals Tribunal, the Equality Tribunal, the Labour Relations Commission, the Rights Commissioner service and the National Employment Rights Authority. The Labour Court will be expanded to take on a role hearing appeals from the adjudication service of the WRC. Whether a claimant or an employer it can only be a good thing for there to be a “one stop shop” through which all workplace disputes can be referred. For all there is to welcome about the WRC, some concerns remain.

Need for reform

The case for reform is unanswerable: with delays of up to 2 years to hearing, cases heard over a protracted period and often inconsistent outcomes, reform is long overdue. The interests of justice demand a more streamlined and efficient service which will allow the opportunity to resolve disputes at the earliest opportunity.

The establishment of the WRC has been largely welcomed by trade unions, employers and representative bodies. The WRC intends, through the use of case management and improved systems, to process claims within a speedier timeframe leading to timely decisions being issued.

No reform of employment laws

While the WRC promises greater efficiency in processing employment complaints an opportunity has been missed to streamline the underlying laws which regulate employment rights in Ireland. There are up to 40 different pieces of employment legislation in Ireland, much of it originating in the EU. Employers and employees will continue to have to navigate their way through this legislation containing many different rights and procedures. There are some improvements in relation to parallel claims (where the same set of events gives rise to separate employment claims). This arises, for example, where an employee claims both unfair dismissal and discriminatory dismissal. Apart from some minor procedural amendments there has been no serious attempt to reconcile inconsistencies in the underlying laws giving rise to employment rights and this is likely to lead to ongoing confusion.

Private Hearings

By contrast to the current situation - where hearings of the Employment Appeals Tribunal are heard in public and are often widely reported in the media - all hearings before the Adjudication Officer (“AO”) of the WRC will be in private. There will be a right of appeal to the Labour Court which will sit in public but first instance hearings will take place behind closed doors. Legal commentators have challenged the constitutionality and appropriateness of private hearings for serious workplace complaints, such as dismissals. Some others have commented that, in an age of social media, it may be in the interests of employees and employers to have disputes adjudicated/resolved without external reporting and public naming of parties. Reported decisions (issued only on an anonymous basis) will impact on the development of case-law and practice as the identification of the parties often is highly relevant to the context of the dispute.

Procedures to be published

The procedures to be followed by the AOs in investigating disputes are expected to be published shortly and these will give greater clarity as to how the AOs will deal with complaints which are referred to the WRC. The role will be more inquisitorial than has been the case before the Employment Appeals Tribunal. It is anticipated that the hearing will be more like a Rights

Commissioner or Equality Officer hearing. There will also be more of a focus on early resolution through mediation as an alternative to investigation by an AO.

Transitional period

The transfer of the functions of the various bodies to the WRC on 1 October 2015 will not affect those cases which are already in the system. All current claims will be processed by the body to which it was originally referred until the caseload is cleared. This means that for practitioners there will be a twin track where existing cases follow existing procedures to hearing and new claims will be processed by the WRC on the new system.

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