

Employment Law: Legislative Updater - April 2016

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Welcome to the ByrneWallace Employment Law Legislative Updater - April 2016.

Summary of Legislative Developments

Covering legislative updates from October 2015 to March 2016, some of the highlights of this issue include;

- The enactment of the Equality (Miscellaneous Provisions) Act 2015, which makes a number of amendments to employment equality legislation in relation to compulsory retirement ages, discriminatory advertisements and the restriction of derogations from equality laws for religious run educational and medical institutions.
- The enactment of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, which provides that convictions may be regarded as spent once certain conditions are satisfied. Where a conviction is regarded as a spent conviction, that person is not required to disclose the conviction itself or the circumstances ancillary thereto when seeking employment or entering employment, except in limited cases specified in the Act.
- The National Minimum Wage Order 2015 declared that from 1 January 2016 the national minimum hourly rate of pay for the purposes of the National Minimum Wage Acts is €9.15.
- Two Employment Regulation orders came into operation on 1 October 2015 prescribing conditions of employment for security operatives and for workers employed in the provision of cleaning and janitorial services [S.I. No. 417/2015 & S.I. No. 418/2015].
- The Industrial Relations Act 1990 (Code of Practice on Protected Disclosures Act 2014) (Declaration) Order 2015 introduced a Code of Practice that guides employers as to how to deal with protected disclosures in the workplace.
- The Workplace Relations Act (Commencement) (No.2) Order 2015 and the Workplace Relations Act 2015 (Establishment Day) Order 2015 provided that 1 October 2015 is the commencement date for most sections of the Workplace Relations Act 2015 and the establishment date of the Workplace Relations Commission.
- The Employment Permit Amendment Regulations 2016 amended the Highly Skilled Eligible Occupations List and the Ineligible Categories of Employment Lists for the purposes of employment permits.
- The Education (Amendment) Bill 2015 [Private Members Bill] which, if enacted provides for the establishment of an Ombudsman for Education who is empowered, among other things, to hear complaints from parents and adult students against decisions of Boards of Management.

Acts

Equality (Miscellaneous Provisions) Act 2015

This Act was signed into law on the 10 December 2015 and was commenced in its entirety on 1 January 2016. The Act makes a number of amendments to employment equality legislation in relation to compulsory retirement ages, discriminatory advertisements and the restriction of derogations from equality laws for religious run educational and medical institutions.

The Act continues to allow employers to set compulsory retirement ages however the fixing of such an age must now be 'objectively and reasonably justified by a legitimate aim', and 'the means of achieving that aim' must be 'appropriate and necessary'. This amendment intends to bring Irish employment equality law firmly in line with the general framework for equal treatment in employment provided in European Council Directive 2000/78/EC and with national and European case law. The Act does not elaborate on the circumstances that might satisfy these conditions however employers may seek guidance from the case-law of the Court of Justice of the European Union and the Irish Courts and Tribunals, which have already considered the meaning of these conditions

The Act also requires an employer to objectively and reasonably justify a decision to offer a fixed term contract to a person over the compulsory retirement age by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Furthermore the Act extends the discriminatory prohibitive provisions of the Employment Equality Act 1998 as it relates to advertising, access to vocational training and membership of certain bodies to include advertisements in relation to access to employment and vocational training or an advertisement concerning membership or entry to that body.

Prior to the implementation of this Act, section 37 of the Employment Equality Act 1998 provided a specific discrimination exemption for religious run education, medical and religious institutions where such discrimination was in order to maintain the religious ethos of that institution. The amendments introduced by the Act to section 37 now significantly narrow that exemption and provide that favourable treatment by state funded educational or medical institutions, that are maintained in whole or in part by monies provided by the Oireachtas, on the grounds of religion shall constitute discrimination unless such treatment is (a) not

discrimination on any other discrimination ground and (b) the religion of the employee or prospective employee is a 'genuine, legitimate and justified occupational requirement having regard to the institution's ethos'. The Act further provides that the assessment of (b) must be 'objectively justified' and the means of achieving that aim are 'appropriate and necessary'.

[Click here for full text \(in PDF format\)](#)

Social Welfare and Pensions Act 2015

With respect to employment law, this Act increases PRSI thresholds and makes provision to allow the Minister for Social Protection, with the consent of the Minister for Finance, to appoint a person who also holds the office of the Financial Services Ombudsman to hold the office of the Pensions Ombudsman.

[Click here for full text \(in PDF format\)](#)

Credit Guarantee (Amendment) Act 2016

Section 83 of the Workplace Relations Act 2015 amended section 101 of the Employment Equality Act 1998. Section 101 provided that in circumstances where a claimant has the option of seeking redress under the 1998 Act or under the Unfair Dismissals legislation or damages at common law, they may only receive compensation from one of these sources. Therefore once a hearing commenced in one of these options, relief could not be granted in another. Section 83 of the 2015 Act amended this to provide that where an employee refers a complaint under the Employment Equality Act 1998 and the Unfair Dismissals Act 1977, "the said complaint shall be deemed to have been withdrawn" unless the claim under the 1977 Act is withdrawn. Section 83 failed to clearly provide that it would be the equality claim that would be deemed to be withdrawn and rather referred to the "said complaint". Section 83 was subsequently deleted by Section 20(1)(m) of the National Minimum Wage (Low Pay Commission) Act 2015 but has been re-enacted in clearer terms in section 17 of the Credit Guarantee (Amendment) Act 2016 which was commenced on enactment. It now expressly provides that it will be the equality claim which shall "from the relevant date" be deemed to have been withdrawn unless the unfair dismissals claim has been withdrawn. The relevant date is to be prescribed by the Minister for Jobs, Enterprise and Innovation.

[Click here for full text \(in PDF format\)](#)

Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016

The Act provides that convictions may be regarded as spent, subject to certain exceptions, once the following conditions are satisfied: where the person was aged 18 or more at the date of the commission of the offence; at least seven years has passed since the commission of the offence; once the sentence is not an "excluded sentence"; and the person has served or complied with the sentence. An "excluded sentence" means a sexual offence, a sentence greater than 12 months or a sentence imposed for an offence tried by the Central Criminal Court.

The ability to regard a conviction as spent is limited to one conviction only per person, except in circumstances where two or more offences are committed simultaneously or arose from the same instance. In such instances those convictions will be regarded as one single conviction. Multiple convictions for offences under the Road Traffic Acts, under Section 37A of the Intoxicating Liquor Act 1988 and certain public order offences, where sentences were imposed in the District Court, may be regarded as spent.

Where a conviction is regarded as a spent conviction, that person shall not be required to disclose the conviction itself or the circumstances ancillary thereto, except in court proceedings where justice cannot be done without admitting it. The non-disclosure provisions do not apply where a requirement is made of a person to disclose previous convictions in an interview conducted by the Gardaí following arrest, in respect of an application to enter, be or remain in the State or for Irish citizenship or in respect of any application or investigation under Part 3 of the Central Bank Reform Act 2010. Furthermore, where an individual applies for, is offered employment or enters into a contract of employment or a contract for services for "specified work" or "relevant work", they must (subject to certain exceptions) disclose the spent conviction. "Specified work" includes work for the Office of Attorney General, the DPP and a full list is available in Schedule 2. "Relevant work" is defined as any work or activity where access to or contact with children or vulnerable adults is a regular or necessary part of that work.

The Act awaits a commencement order.

[Click here for full text \(in PDF format\)](#)

Statutory Instruments

Workplace Relations Act (Commencement) (No.2) Order 2015 [S.I. No. 410/2015]

This Order provides that 1 October 2015 is the commencement date for the Workplace Relations Act 2015, other than sections 37, 65-70, in so far as it is not already in operation.

[Click here for full text \(in PDF format\)](#)

National Minimum Wage (Low Pay Commission) Act 2015 (Section 20) (Commencement) (No. 2) Order 2015 [S.I. No. 411/2015]

This statutory instrument provides for the coming into operation of section 20, apart from section 20(1)(b), of the National Minimum Wage (Low Pay Commission) Act 2015 on 1 October 2015. Section 20 provides for minor amendments to sections 1, 2, 13, 28, 40, 41, 53, 74, 76, 80, 81, 83, 84 and Schedules 3 and 4 of the Workplace Relations Act 2015, the most noteworthy of which provides for the continuation of functions vested in equality officers and equality mediation officers following the commencement of that Act.

[Click here for full text \(in PDF format\)](#)

Workplace Relations Act 2015 (Establishment Day) Order 2015 [S.I. No. 412/2015]

This Order provides that 1 October 2015 is the establishment day for the purposes of the Workplace Relations Act 2015.

[Click here for full text \(in PDF format\)](#)

Labour Relations Commission (Dissolution Day) Order 2015 [S.I. No. 413/2015]

This Order dissolves the Labour Relations Commission with effect from 1 October 2015.

[Click here for full text \(in PDF format\)](#)

Employment Regulation Order (Security Industry Joint Labour Committee) 2015 [S.I. No. 417/2015]

This Order, which came into operation on 1 October 2015, provides for the rate of remuneration of €10.75 per hour and for conditions of employment of security operatives. More particularly the order provides that the annual leave, public holiday entitlements and working

hours, rest periods and breaks of security operatives shall be in accordance with the Organisation of Working Time Act 1997 and specifies the rates payable to security operatives for death in service benefit and personal attack benefit. Furthermore the Order states that Grievance and Disciplinary hearings will be carried out in accordance with the procedures set out in the Code of Practice on Grievance and Disciplinary procedures (S.I. No. 146/2000).

[Click here for full text \(in PDF format\)](#)

Employment Regulation Order (Contract Cleaning Joint Labour Committee) 2015 [S.I. No. 418/2015]

This Order, which comes in to operation on 1 October 2015, provides for the rate of remuneration of €9.75 per hour and conditions of employment for workers employed in whole or in part in the provision of cleaning and janitorial services. More particularly the Order provides for the calculation of annual leave, and that public holiday entitlements shall be in accordance with the Organisation of Working Time Act 1997. The Order sets out the form of the written statement of employee's terms of employment to be provided to employees within two months of commencement of employment in compliance with the Terms of Employment (Information) Act, 1994. It also provides inter alia for a sick pay scheme for workers which requires a medical certificate to be submitted after three days of illness and that no benefit is to be paid in respect of the first five working days of illness. The Order further provides that the Maternity Protection Acts, 1994 — 2004, Minimum Notice and Terms of Employment Acts, 1973 — 1991 Codes of Practice contained in S.I. No. 17 of 2002 (Bullying in the Workplace), S.I. No 78 of 2002 Employment Equality Act 1998 (Code of Practice) (Harassment) Order, 2002 & 2012 and S.I. No. 146 of 2000 (Grievance and Disciplinary Procedures) are to be observed in respect of these workers. Furthermore the Order sets overtime rates to be paid after 44 hours at time and a half for the first four hours and double time thereafter and that Sunday overtime is at the rate of double time and sets death in service benefit at €5,000.

[Click here for full text \(in PDF format\)](#)

Workplace Relations Act 2015 (Fixed Payment Notice) Regulations 2015 [S.I. No. 419/2015]

These Regulations prescribe the form of fixed payment notices in lieu of prosecution and the amount of the fixed payments for the purposes of section 36(1)(B) of the Workplace Relations Act 2015 which deals with a number of offences under different employment statutes. The amount of €2,000 is prescribed for section 9 and 10 of the

Protection of Employment Act, 1977, which provide for offences for failing to consult employees' representatives in the case of collective redundancies and for failing to comply with the obligation to supply employees' representatives with certain information relating to the proposed redundancies. The amount of €1,500 is prescribed for offences under section 4(4) of the Payment of Wages Act 1991 where employers fail to provide their employees with statements of wages. The amount of €1,500 is prescribed for an offence of, after a request from the employee under section 23 of the National Minimum Wage Act 2000, failing to provide an employee with a statement of their average hourly rate of pay for any pay reference period.

[Click here for full text \(in PDF format\).](#)

National Minimum Wage Order 2015 [S.I. 442/2015]

This Order declares that from 1 January 2016 the national minimum hourly rate of pay for the purposes of the National Minimum Wage Acts is €9.15.

[Click here for full text \(in PDF format\)](#)

Pensions Ombudsman's Superannuation Scheme 2015 [S.I. No. 433/2015]

With the consent of the Minister for Public Expenditure and Reform these Regulations establish the Pensions Ombudsman Superannuation Scheme 2015.

[Click here for full text \(in PDF format\)](#)

Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2015 [S.I. No. 448/2015]

This Order amends those listed as prescribed persons to whom a protected disclosure may be made under section 7(2) of the Protected Disclosure Act 2014. It removes the Secretary General of the Department of Education and Skills from this list and adds the Director of the Commission for Public Service Appointments. It further amends the description of matters in respect of which the Secretary to the Standards in Public Office Commission is prescribed as the recipient of disclosures of relevant wrongdoings. The description of matters now specifically provides for inter alia the disclosure of donations to political parties, obligations of third parties and corporate donors, the monitoring of limitations on expenditure by election candidates and political parties and all matters relating to the supervision of the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014 (No 6 of 2014).

[Click here for full text \(in PDF format\)](#)

Industrial Relations Act 1990 (Code of Practice on Victimisation) (Declaration) Order 2015 [S.I. No. 463/2015]

The Industrial Relations (Miscellaneous Provisions) Act 2004 prohibits victimisation in the context of voluntary dispute resolution under the Industrial Relations Act 1990. The above Order repeals the Code of Practice previously contained in S.I. No. 139/2004 and provides a new Code of Practice on Victimisation in this context. The major objective of the Code is to set out the different types of practice which would constitute victimisation arising from an employee's membership or activity on behalf of a trade union or a manager discharging his or her managerial functions, or other employees.

[Click here for full text \(in PDF format\)](#)

Industrial Relations Act 1990 (Code of Practice on Protected Disclosures Act 2014) (Declaration) Order 2015 [S.I. No. 464/2015]

This Order provides a code of practice for the purposes of the Industrial Relations Act 1990. The code aims to give guidance and set out best practice to help employers, workers and their representatives understand the law in regard to the disclosure of information regarding wrongdoing in the workplace and to give guidance and set out best practice in regard to how to deal with the disclosure of such information in the workplace.

[Click here for full text \(in PDF format\)](#)

Immigration Act 2004 (Visas) (Amendment) (No. 2) Order 2012 [S.I.No. 513/2015]

This Order removes Malawi from Schedule 1 of S.I. No. 473/2014 which specifies countries, nationals of which are not required to be in possession of a valid Irish visa when landing in the State.

[Click here for full text \(in PDF format\)](#)

Safety, Health and Welfare at Work (Docks) (Revocation) Regulations 2015 [S.I. No. 521/2015] and Code of Practice for Health and Safety in Dock Work

These Regulations revoke the remaining provisions of the Docks (Safety, Health and Welfare) Regulations 1960 (S.I. No. 279 of 1960) and the entirety of the Docks (Safety, Health and Welfare)(Forms) Regulations 1965 (S.I. No. 63 of 1963). These revocations came in to operation

on 1 January 2016 and are required to be introduced in parallel with the publication and coming into operation of the Health and Safety Authority's Code of Practice for Health and Safety in Dock Work to ensure the avoidance of any possible overlap in related legislation upon introduction of the Code.

[Click here for full text \(in PDF format\)](#)

Workplace Relations Act 2015 (Fees) Regulations 2015 [S.I. No. 536/2015]

Section 71 of the Workplace Relations Act 2015 provides that the Minister may by regulation prescribe for the levying of fees and charges on the users of services to be provided by the Workplace Relations Commission or the Labour Court. These Regulations prescribe a "relevant service" for the purpose of section 71 of the Act as meaning any service provided by the Labour Court to an appellant, in relation to an appeal under section 44 of the Act, by reason of the appellant's failure or refusal, without reasonable excuse, to attend at the first instance hearing by an adjudication officer of the relevant complaint or dispute.

[Click here for full text \(in PDF format\)](#)

Employment Permits (Amendment) (No. 2) Regulations Act [S.I. No. 602/2015]

These Regulations, commenced on 1 January 2016, provide that the minimum hourly rate of remuneration for which a Dependant/Partner/Spouse Employment permit, a Reactivation Employment Permit, an Exchange Employment Permit, a Sport & Cultural Employment Permit or an Internship Employment Permit may be granted is the rate as provided in National Minimum Wage Order 2015 (S.I. No.442 of 2015), Employment Regulation Order (Contract Cleaning Joint Labour Committee) 2015 (S.I. No.418 of 2015), or Employment Regulation Order (Security Industry Joint Labour Committee) 2015 (S.I. No.417 of 2015). Schedule 2 amends the Regulatory bodies or Government Minister from which or whom registration or recognition of qualifications is required.

[Click here for full text \(in PDF format\)](#)

Equality (Miscellaneous Provisions) Act 2015 (Commencement) Order 2015 [S.I. No. 610/2015]

This Order provides that the Equality (Miscellaneous Provisions) Act 2015 came in to operation on 1 January 2016.

[Click here for full text \(in PDF format\)](#)

**Children and Family Relationships Act 2015
(Commencement of Certain Provisions) Order 2016 [S.I. No. 12/2016]**

This Order brings certain provisions of the Children and Family Relationships Act 2015 into operation with effect from 18 January 2016 including section 173, 174 and 178. Section 173 and 174 amend the definition of “adopting parent” in section 2 of the Redundancy Payments Act 1967 and section 1 of the Unfair Dismissals Act 1977 respectively. Section 178 amends the definition of “relevant parent” in section 6 of the Parental Leave Act 1998.

[Click here for full text \(in PDF format\)](#)

Employment Permits (Amendment) Regulations 2016 [S.I. No. 33/2016]

These Regulations amend the Employment Permits Regulations 2014 by substituting new schedules for schedule 3 and 4. These schedules provide lists of employment in respect of which there is a shortage in respect of qualifications, experience or skills which are required for the proper functioning of the economy (Highly Skilled Eligible Occupations List) and a list of employments in respect of which an employment permit shall not be granted (Ineligible Categories of Employment Lists).

[Click here for full text \(in PDF format\)](#)

Employment Equality Act 1998 (Withdrawal of Certain Claims) (Relevant Date) Regulations 2016 [S.I. No. 126 of 2016]

These Regulations provide that the date from which equality claims shall be deemed to be withdrawn for the purposes of section 101(4A) of the Employment Equality Act 1998 shall be 42 days from the date of the notification in writing from the Workplace Relations Commission informing them that section 101(4A) applies to their claim.

[Click here for full text \(in PDF format\)](#)

Notable Bills

Education (Amendment) Bill 2015

The Bill seeks to amend the Education Act 1998 by inserting a new Part X which provides for the creation of an Ombudsman for Education. The Bill proposes that this Ombudsman would be empowered to hear appeals from parents or students over the age of eighteen against

decisions of boards of education concerning decisions of teachers and grievances against schools.

This Private Member’s Bill, sponsored by Deputy Jim Daly, was introduced on 21 October 2015 and has yet to move to the Second Stage before Dail Eireann.

[Click here for full text \(in PDF format\)](#)

Industrial Relations (Blacklists) Bill 2015 [PMB]

The Bill contains a general prohibition, subject to limited exceptions, on compiling, using, selling or supplying a prohibited list: a list which contains details of persons who are, or have been, members of trade unions or persons who are taking part, or have taken part, in the activities of trade unions, an industrial action or strike, and is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers. If a reason related to a prohibited list is used by either a prospective employer or an employment agency to refuse employment or services, a person has a right of complaint to the Workplace Relations Commission. The Bill further provides that employers shall not penalise or threaten penalisation of a worker for making or giving notice of his or her intention to make a complaint to the Commission. Where the Commission finds that a complaint under this Bill is well founded it may declare that and require the employer or employment agency to pay the work compensation which that Commission considers just and equitable having regard to all the circumstances subject to the maximum of 2 years’ remuneration. Where an employer or employment agency fails or refuses to comply with an order for compensation they shall be guilty on an offence, punishable on summary conviction to a class A fine or imprisonment for a term not exceeding six months or both, or on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding three years or both.

This Private Member’s Bill, sponsored by Deputy Peadar Toibin, introduced on the 16 December 2015 and has yet to move to Second Stage before Dail Eireann.

[Click here for full text \(in PDF format\)](#)

Competition (Amendment) Bill 2016 [PMB]

This Bill proposes to enable trade unions to organise and to negotiate collectively on behalf of self-employed individuals, described in the Bill as individuals who enter into or work under contracts "personally to do or provide any work or services" and such individuals would not be classed as "undertakings" for the purposes of Competition Law. Self-employed individuals would continue to be prohibited from price fixing against consumer interest.

This Private Member's Bill is sponsored by Senator Ivana Bacik and passed Second Stage in the Seanad on 20 January 2016.

[Click here for full text \(in PDF format\)](#)

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