

## Employment Law: Legislative Updater - October 2015

### Contents

#### Acts

- Industrial Relations (Amendment) Act 2015
- National Minimum Wage (Low Pay Commission) Act 2015

#### Statutory Instruments

- Employment Permits (Amendment) Regulations 2015
- Industrial Relations (Amendment) Act 2015 (Commencement) Order 2015
- Industrial Relations Act 1969 (Section 3A) Order 2015
- Industrial Relations Act 1976 (Section 8) Order 2015
- National Minimum Wage (Low Pay Commission) Act 2015 (Section 20) (Commencement) Order 2015
- Organisation of Working Time (Non-Application of Certain Provisions to Persons Performing Mobile Road Transport Activities) Regulations 2015
- Private Security (Licence Fees) Regulations 2015
- Workplace Relations Act 2015 (Commencement) Order 2015

#### Notable Bills

- Banded Hours Contract Bill 2015 [PMB]
- Equality (Miscellaneous Provisions) Bill 2013
- Longer Healthy Living Bill 2015

#### Other Developments

- Protected Disclosures Act 2014: Draft Guidance for Public Bodies published

### Welcome to the ByrneWallace Employment Law Legislative Updater - October 2015.

#### Summary of Legislative Developments

Covering legislative updates from July, August and September 2015, some of the highlights of this issue include;

- The long awaited Industrial Relations (Amendment) Act 2015 which regularises the position in relation to Registered Employment Agreements and introduces the Sectoral Employment Order. The Act also permits the Labour Court to make recommendations providing for the improvement in the remuneration and conditions of employment of a grade, group or category of worker of a particular employer by reference to similar employments, associated employers outside the State and collective agreements in place in similar employments.
- The commencement of Section 86(1) of the Workplace Relations Act 2015 which brings the Organisation of Working Time Act, 1997 into line with the EU Working Time Directive in relation to annual leave entitlements. Up until 1 August last, the Organisation of Working Time Act, 1997 required an employee to be at work or otherwise at the disposal of his/her employer in order to accrue annual leave entitlements. This meant that private sector employees who were absent from work as a result of illness could not accrue statutory leave entitlements for the period of absence. Section 86(1) provides that annual leave entitlements will now continue to accrue during periods of certified sick leave. It also extends the statutory carry-over period for those employees that are unable to use up their leave entitlements during the year of accrual as a result of illness.
- The introduction of a new suite of application forms and the amendment of existing eligibility/ineligibility categories for work permits. The Employment Permits (Amendment) Regulations 2015, which came into operation on 1 September 2015, also created a new CORU registration requirement for work permit applications received from/on behalf of occupational therapists, speech and language therapists and dieticians.
- The revival of a 2013 Bill which, if enacted, will require employers to objectively justify the operation of mandatory retirement policies.
- The publication, by the Minister for Public Expenditure and Reform, of draft Guidance for the purposes of the Protected Disclosures Act 2014. The draft Guidance addresses a variety of significant issues and contains a sample Protected Disclosures Procedure.

## Acts

### Industrial Relations (Amendment) Act 2015

This Act firstly addresses the situation brought about by the 2011 ruling in the case of *John Grace Fried Chicken v The Labour Court*, which found that the legislative provisions underpinning Employment Regulation Orders were unconstitutional. The Act provides for the registration and regulation of Employment Agreements and Sectoral Employment Orders ("SEOs"). The Act permits the Labour Court to register an agreement where a number of conditions are satisfied and the Court is of the view that the agreement is likely to promote harmonious relations between the workers concerned and their employer and the avoidance of industrial unrest.

In the context of SEOs, the Act provides for the making of a request to the Labour Court for the examination of the terms and conditions of employment of the workers of a particular class, type or group in the economic sector in respect of which the request is expressed to apply. The Act requires the Labour Court to issue a notice of its intention to carry out an examination and to invite representations from interested parties. Having heard all interested parties, the Act then requires the Labour Court to make a recommendation to the Minister. In doing so, the Labour Court is obliged to consider a number of matters, including the potential impact on competitiveness in the economic sector concerned and the general level of remuneration in other economic sectors in which similar workers are employed. Providing that the Minister is satisfied that the Labour Court has complied with the requirements of the Act, the Minister must accept the Labour Court's recommendation and, by order, confirm the terms of the recommendation.

The Act provides for the possibility of an exemption from the obligation to pay workers at the rates set by an SEO where certain, very limited, criteria are satisfied. Such an exemption may only be granted for a limited period of time in circumstances where the Labour Court is satisfied that the business of the employer concerned is "experiencing severe financial difficulties" and the requirement to apply the rates of pay set out in the relevant SEO would create a "substantial risk" that (i) a significant number of the workers concerned would be laid off or made redundant, or (ii) the sustainability of the employer's business would be significantly adversely affected. In considering whether or not to grant an exemption, the Labour Court is also required to have regard to any potential adverse effect on employment levels and the possible distortion of competition in

the economic sector concerned, to the detriment of employers not party to the application but who are also subject to the SEO and the long term sustainability of the applicant employer's business were an exemption to be granted.

The Act secondly amends the Industrial Relations (Amendment) Act 2001 in a number of important respects. The Act firstly defines "collective bargaining" as meaning "voluntary engagements or negotiations between any employer or employers' organisation ... and a trade union of workers or excepted body ... with the object of reaching agreement regarding working conditions or terms of employment". The definition includes a situation whereby an employer engages in collective bargaining directly with a body (or bodies) of workers where such body is "independent and not under the domination and control of an employer or trade union of employers" and where the body carries on "engagements or negotiations" with the employer with the object of reaching agreement regarding wages or other conditions of employment of its own members (but of no other employees).

Where it is asserted that it is the practice of the employer to engage in collective bargaining with such a body of workers, the Act requires the Labour Court to have regard to the establishment, functioning and administration of the body in order to ensure that the circumstances of any engagement or negotiation is genuine.

The most radical change brought about by the Act however is the power of the Labour Court to make a recommendation providing for the improvement in the remuneration and conditions of employment of a grade, group or category of worker of a particular employer. In exercising this power, the Labour Court is required to have regard to the effect such recommendation may have on the maintenance of employment and the long term sustainability of the business of the employer. The Act provides that the Court, when considering any such application, must have regard to (i) the totality of the remuneration and conditions of employment of comparable workers employed in similar employments and (ii) the comparability of skills, responsibilities, physical and mental effort required to perform the work concerned. The Labour Court is further entitled to take into account the rate of pay and conditions of employment of "an associated employer outside the State" and to the terms of any collective agreements in place in similar employments.

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

**National Minimum Wage (Low Pay Commission) Act 2015**

This Act amends the National Minimum Wage Act, 2000 to provide for the establishment, on a statutory footing, of the Low Pay Commission to advise on the setting of the national minimum wage. The Act provides that the Commission shall, once each year, make a recommendation and report to the Minister for Jobs, Enterprise and Innovation regarding the national minimum hourly rate of pay that: "(a) is designed to assist as many low paid workers as is reasonably practicable, (b) is set at a rate that is both fair and sustainable, (c) where adjustment is appropriate, is adjusted incrementally, and (d) over time, is progressively increased, without creating significant adverse consequences for employment or competitiveness."

The Act further provides that within 3 months of the date of receipt of that recommendation and report, the Minister shall, by order: (a) declare a national minimum hourly rate of pay (i) in the terms recommended by the Commission, or (ii) in other terms, or (b) decline to make such an order.

The Act also makes some substantive amendments to the Workplace Relations Act 2015, as well as amending the Industrial Relations Act 1946, the Redundancy Payments Act 1967, the Unfair Dismissals Acts 1977 and other employment legislation to facilitate the operation of the Workplace Relations Act 2015.

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

**Statutory Instruments**

**Employment Permits (Amendment) Regulations 2015 [S.I. No. 349/2015]**

These regulations came into operation on 1 September 2015 and operate to amend the Employment Permits Regulations 2014 in a number of respects, including (i) the removal of telecommunications engineers, IT engineers, chiropractors and mobility instructors for the visually impaired from the ineligible list of occupations, (ii) the addition of a number of new occupations to the ineligible list, including dispensing opticians, (iii) the announcement of the availability of 200 general employment permits in respect of meat boners, in line with an increase in demand in the meat sector, (iv) the addition of a number of occupations connected to the medical sector to the highly-skilled occupations list, and (v) the removal of healthcare practice managers and senior social services managers and directors from the highly-skilled occupations list. Other amendments

include the introduction of a new suite of employment permit application forms, the amendment of supporting documentation for applications and the introduction of a new CORU registration requirement for occupational therapists, speech and language therapists and dieticians.

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

**Industrial Relations (Amendment) Act 2015 (Commencement) Order 2015 [S.I. No. 329/2015]**

This statutory instrument provides for the coming into operation of the Industrial Relations (Amendment) Act 2015 on 1 August 2015.

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

**Industrial Relations Act 1969 (Section 3A) Order 2015 [S.I. No. 344/2015]**

Section 78 of the Workplace Relations Act 2015 makes provision for the insertion of a new Section 3A to the Industrial Relations Act, 1969, which, in turn, provides for the making of regulations by the Minister after consultation with the Chairman of the Labour Court that certain functions of the Labour Court may be performed by the Chairman or a Deputy Chairman sitting alone. This Order sets out the functions of the Labour Court which are prescribed for purposes of Section 3A of the Industrial Relations Act, 1969, namely, certain functions relating to applications to the Court on procedural matters and functions relating to case management.

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

**Industrial Relations Act 1976 (Section 8) Order 2015 [S.I. No. 385/2015]**

This Order, which came into operation on 10 September 2015, simply provides for the establishment of an additional Division of the Labour Court.

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

**National Minimum Wage (Low Pay Commission) Act 2015 (Section 20) (Commencement) Order 2015 [S.I. No. 340/2015]**

This Order provides for the commencement of Section 20(1)(b) of the National Minimum Wage (Low Pay Commission) Act 2015 on 1 August 2015. This provision amends Section 2 of the Workplace Relations Act 2015 by inserting definitions of the terms "Act of 1984"

(i.e. the Protection of Employees (Employers' Insolvency) Act 1984), "equality officer", "equality mediation officer" and "rights commissioner" into that Act.

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

**Organisation of Working Time (Non-Application of Certain Provisions to Persons Performing Mobile Road Transport Activities) Regulations 2015 [S.I. No. 342/2015]**

These Regulations are made pursuant to Sections 3(3), 7 and 25 of the Organisation of Working Time Act, 1997. The Regulations operate to clarify the law regarding working time in the context of mobile transport workers. The Regulations remove mobile transport workers (as defined in Directive 2002/15/EC), from the scope of Sections 11 (daily rest period), 12 (rest and intervals at work), 13 (weekly rest periods), 15 (weekly working hours) and 16 (nightly working hours) of the Organisation of Working Time Act, 1997. They also operate to remove mobile transport workers from the scope of S.I. No. 473/2001, which prescribes the form in which records required to be kept under the Organisation of Working Time Act should be held, and sets out the particulars and documents that are required to be maintained instead.

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

**Private Security (Licence Fees) Regulations 2015 [S.I. No. 362/2015]**

On 28 May 2015, the Minister for Justice and Equality (the "Minister") announced that, with effect from 1 November 2015, contractors providing security services will require a licence from the Private Security Authority ("the PSA"). In making this announcement, the Minister referred to the "undesirable activities and practices of the sector" highlighted by a number of successful prosecutions by the Data Protection Commissioner.

By way of background, the Private Security Services Act, 2004 provides for the licensing of individuals involved in private security and private investigations. In the 2004 Act, a "private investigator" means a person who, for remuneration, conducts investigations into matters on behalf of a client and includes a person who — (a) obtains or furnishes information in relation to the personal character, actions or occupation of a person or to the character or kind of business in which a person is engaged, or (b) searches for missing persons [\[Click here for full text \(in PDF format\)\]](#).

The PSA, in the Private Security (Licensing and Standards) (Private Investigator) Regulations 2015 (S.I. No. 195/2015), prescribed the standards which "private

investigators" will need to comply with when providing such services [\[Click here for full text \(in PDF format\)\]](#). From 1 November 2015, it will be an offence for a private investigator to operate without a licence and an offence for a person to engage or employ an unlicensed private investigator.

S.I. No. 362/2015 (as published on 28 August 2015) provides that the duration of a licence granted to an individual on or after 1 December 2015 will be for a period of three years. It also prescribes the applicable licence fees.

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

**Workplace Relations Act 2015 (Commencement) Order 2015 [S.I. No. 338/2015]**

This Order provides for the commencement of certain technical and operational provisions of the Workplace Relations Act, 2015. The Order firstly provides for the commencement, on 1 August 2015, of Section 86(1) of the Workplace Relations Act, 2015 which gives further effect to the EU Working Time Directive (Directive 2003/88/EC) by amending the provisions relating to the accrual of annual leave in Sections 19, 20 and 23 of the Organisation of Working Time Act, 1997.

Section 86(1) provides that statutory annual leave entitlements will now continue to accrue during periods of certified sick leave. It also provides for an increase, to 15 months, in the annual leave carry-over period for employees who could not, as a result of illness, take annual leave during the relevant leave year or during the normal 6 month carry-over period. Section 86(1) further provides, in the event of termination of employment, for the making of a payment in lieu of annual leave which was not used by the employee as a result of certified illness in circumstances where the employee leaves the employment within a period of 15 months following the end of the leave year during which the leave entitlement accrued.

This Order secondly provides for the commencement of Section 86(3) of the Workplace Relations Act, 2015 which, in turn, repeals Section 2B of the Financial Emergency Measures in the Public Interest (FEMPI) Act, 2009. Section 2B was inserted into the FEMPI 2009 Act as a limited contingency measure in case no collective agreement was concluded following the Haddington Road negotiations. The provision, which has never been utilised, allowed individual Ministers or public sector employers to take steps that would impact on non-core pay and working hours of staff in their organisations.

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

## Notable Bills

### **Banded Hours Contract Bill 2015 [PMB]**

This Private Member's Bill is sponsored by Deputy Peadar Tóibín (Sinn Féin) and provides for banded hour contracts, the right for a worker to request increased hours and a corresponding obligation on an employer to consider such a request and to permit refusal only on objectively justified grounds. It also requires employers to provide information to workers on the overall working hours available in the employment.

The Bill was introduced on 16 July 2015 and has yet to move to the Second Stage before Seanad Éireann.

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

### **Equality (Miscellaneous Provisions) Bill 2013 [Seanad] [PMB]**

This Private Member's Bill is sponsored by Senator Ivana Bacik and was first presented to Seanad Éireann in March 2013 under the title of the "Employment Equality (Amendment) (No. 2) Bill 2013". It was renamed the Equality (Miscellaneous Provisions) Bill 2013 in July 2015. The Bill, if enacted, will clarify the circumstances in which an employer may compel an employee to retire. Employers will continue to be allowed to set compulsory retirement ages but only if they are 'objectively and reasonably justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary'. The legislation does not elaborate on the circumstances that might satisfy these conditions however employers may seek guidance from the caselaw 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 Bill will also require an employer to objectively justify a decision to offer a fixed term contract to a person over the compulsory retirement age for that employment. The Bill contains a number of other amendments to the equality code, including provisions which will restrict certain derogations from equality laws which are currently available to religious-run education and medical institutions.

The Bill passed the Report and Final Stages before Seanad Éireann on 14 July 2015 and is currently awaiting consideration before Dáil Éireann.

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

### **Longer Healthy Living Bill 2015 [Seanad] [PMB]**

This Private Member's Bill is sponsored by Senators John Crown, Sean D. Barrett and Averil Power and seeks to ensure that "all those who are employees of the Department of Health, and all those who are employed by bodies directly funded by the Department of Health may, if they wish, postpone their retirement where they would otherwise have been forced to retire at a particular age that is stipulated in their employment contract, subject to their continuing capacity to fulfil the duties of their employment in a safe fashion".

The Bill includes a "Grandfather Clause" which permits an individual who attained the mandatory retirement age for his/her employment within 2 years of the commencement of the legislation to apply to the Minister to have his/her employment reinitiated on the same terms and conditions that were previously available to him/her.

The Bill provides that an individual seeking to have a mandatory retirement age clause ignored pursuant to the legislation shall be assumed to be fit to work unless a registered medical practitioner has determined that they have become unfit to work as a result of the existence of a medical condition.

In relation to medical assessments carried out for the purposes of the legislation, the Bill states that the assessing medical practitioner may only consider "whether there exists a medical condition that could prevent [the] individual from carrying out their employment in a safe manner" by reference to a description of "the tasks and requirements" of the job.

The Bill has passed the Second Stage before Seanad Éireann and is scheduled to reach Committee Stage on 7 October 2015.

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

## Other Developments

### **Protected Disclosures Act 2014: Draft Guidance for Public Bodies**

The Protected Disclosures Act 2014 (the "Act") came into force on 15 July 2014. The Act introduced serious sanctions (including awards of up to five years' gross remuneration) where an employee is dismissed or penalised for having made a protected disclosure. A person to whom a protected disclosure is made is also obliged under the Act to protect the identity of the discloser.

Section 21(1) of the Act provides that "[e]very public body shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures."

Section 21(3) allows the Minister for Public Expenditure and Reform (the "Minister") to issue guidance to assist public bodies in the performance of their functions under section 21(1) (the "Guidance") and section 21(4) provides that public bodies "shall have regard to" the Guidance when establishing and maintaining such Procedures.

On Friday 25 September 2015, the Minister published draft Guidance for public consultation. The draft Guidance is quite detailed and addresses significant issues, such as:

- Where responsibility should lie within a public body for the operation of the procedures;
- To whom the procedures should apply;
- Disclosures of employment-specific or profession-specific obligations;
- What constitutes a reasonable belief;
- How to make a disclosure under the Act;
- Protecting the identity of the discloser;
- Anonymous disclosures;
- Personal complaints as opposed to protected disclosures;
- The motivation behind the disclosure;
- Assessment and investigation of the disclosure; and
- Protection of the rights of respondents.

The draft Guidance also contains a sample Protected Disclosures Procedure.

Public consultation will be open until Friday, 23 October 2015, and the Department of Public Expenditure and Reform will then proceed to finalise the Guidance and make it available to all public bodies. The draft Guidance has already been the subject of written consultation with all Government departments.

[Click here](#) for a copy of the Minister's press release and to view the draft Guidance.

## Contact Us



### Emmet Whelan

Senior Associate, Employment Law  
+353 1 691 5303  
[ewhelan@byrnewallace.com](mailto:ewhelan@byrnewallace.com)



### Fleur O'Shea

Solicitor, Employment Law  
+353 1 691 5812  
[fo'shea@byrnewallace.com](mailto:fo'shea@byrnewallace.com)

Or any member of our  
[Employment Law Department](#)

### Contact Us

#### Dublin

88 Harcourt Street, Dublin 2, Ireland

Tel: (01) 691 5000

Email: [info@byrnewallace.com](mailto:info@byrnewallace.com)

[www.byrnewallace.com](http://www.byrnewallace.com)

DISCLAIMER: THE CONTENT OF THIS PUBLICATION DOES NOT CONSTITUTE LEGAL OR OTHER PROFESSIONAL ADVICE AND IS NOT INTENDED TO BE RELIED UPON AS SUCH.