
Unfair Dismissals Acts, 1977 – 2001

Presentation by:

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Scope of the Unfair Dismissals Acts

- ❑ Acts apply only to
 - employees with a ‘contract of service’ - some exceptions
 - between age 16 & retirement age where one is agreed; no upper age limit where no retirement age agreed (Equality Act 2004);
 - with one year’s “continuous” service

Persons not covered by Acts

- Those with a contract 'for services'
- Apprentices in the first six months of training and during the first month following completion of apprenticeship
- Employees with less than 52 weeks' continuous service

Persons not covered (cont'd)

- ❑ Employees who have reached the normal retirement age – where one is agreed
- ❑ Persons employed by a family member at home or on a farm where both employer and employee reside
- ❑ An employee on probation or training at the beginning of his/her employment, provided that the contract is in writing and the duration of the training or probation is specified therein to be less than 1 year
- ❑ Persons employed by/under the State: Gardaí, Army Personnel, Civil Servants

Service Requirement

- ❑ An employee must have normally 52 weeks' continuous service with employer in order to qualify under the Acts
- ❑ Exceptions include dismissal for:
 - trade union membership/activity;
 - pregnancy;
 - exercise of rights under Maternity Protection Acts 1994-2004;
 - exercise of rights under Adoptive Leave Act 1995;
 - exercise of rights under the Parental Leave Act 1998;
 - upholding the National Minimum Wage Act 2000 ;
 - exercise of rights under the Carer's Leave Act, 2001.

Constructive Dismissal

- ❑ Employee terminates due to:
 - employer's (alleged) unreasonable behaviour; or
 - Employer's (alleged) breach of a term of the contract

- ❑ Grievance procedure?

Redress

- ❑ Re-instatement in the old job (on the terms and conditions pertaining on the date of the award),
or
- ❑ Re-engagement in the old job or in a suitable alternative job on conditions which the adjudicating body considers reasonable,
or
- ❑ Financial compensation within a maximum of 2 years' remuneration

Defending an Unfair Dismissal Claim

Section 6(1)

- ❑ The Unfair Dismissals Acts, 1977-2001 deem provisionally unfair ‘the dismissal of an employee’
- ❑ It follows that in an Unfair Dismissal Action the burden of proof rests with the employer to demonstrate the dismissal was neither substantively nor procedurally unfair

Grounds Justifying the Dismissal

- ❑ In order to justify a dismissal, an employer has to show that it resulted from one or more of the following causes:
 - The capability, competence or qualifications of the employee;
 - The employee's conduct;
 - The redundancy of the employee;
 - Continuance of the employment would result in a breach of another Act;
 - Or other substantial grounds

Capability

- ❑ Relates to the employee's physical and mental ability to the job
 - Usually arises in cases of prolonged absence or regular/recurrent absence or disability after an accident.

Competence

- ❑ Difficult ground to justify
- ❑ Employer's subjective assessment must be justified by reference to some objective benchmark
- ❑ There has to be a high degree of reasonableness in the process
- ❑ The employer's claim may be countered by the employee's showing that his poor performance was due to factors other than his own ability (prevailing market forces; withdrawal of support by employer; lack of back-up structures)
- ❑ The employer must have made the employee aware that there is a problem

Qualification

- ❑ No definition in the Act.
- ❑ Qualifications must be for performing work of the kind which the employee was employed by the employer to do
- ❑ Clearly covered are formal qualifications (technical and professional) as well as employer's aptitude tests

Conduct

- ❑ The conduct must refer to actions of such a nature that they reflect in some way on the employer/employee relationship
- ❑ Conduct may occur within or outside the course of employment
- ❑ An employee may be dismissed for gross misconduct (summary, usually), for a single breach of discipline or for misconduct consisting of a series of acts and following a series of warnings/ suspensions

Importance of fair procedure

- The application of basic principles of fairness and natural justice all important here:
 - “An employer will be regarded as having fairly dismissed an employee only if it both gave the employee the full benefits of fair procedure and accorded him his just deserts or established a functional necessity for his dismissal.”
(Redmond)

Fair Procedures

- Right to know reasons
- Real right to reply
- Right to representation
- Right to an impartial hearing
 - no bias
 - no pre-judgement
- Right to appeal

Conduct the Investigation

- Aware of allegations
- Suspension with pay
- Investigate as thorough as possible
- Written statements
- Opportunity to defend
- Evidence of witnesses/statements etc
- Warnings and procedures

Disciplinary Meeting

- Clearly state disciplinary meeting
- Set time and venue in advance – advise all parties
- Offer right of representative
- Go through evidence
- Minutes
- Opportunity for questions
- Conclude meeting
- Following meeting issue warning – not in court of law beyond reasonable doubt!!!

Disciplinary Action

- ❑ Punishment must fit the crime
 - Verbal Warning
 - First Written Warning
 - Second Written Warning
 - Dismissal
- ❑ All warnings issued – copy placed on file

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