
CRITICAL ASPECTS OF EMPLOYMENT LEGISLATION

Presentation by:

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RECRUITMENT & SELECTION

8 Steps in the Recruitment Process:

- Personal Specification
- Advertising
- Job Application Form
- Shortlisting
- Selection Tests
- The Interview
- Interview Assessment
- Appointment

EMPLOYMENT EQUALITY ACT

SCOPE:

- Gender
- Marital Status
- Family Status
- Sexual Orientation
- Age
- Disability
- Race
- Religion
- Membership of the traveller community

EQUALITY

- No requirement to recruit, promote or retain if:
 - Person cannot do the terms and conditions attached to job *or*
 - is not fully competent and available to undertake the duties of the position
- A person with a disability will be regarded as fully capable if they can undertake job with some facilitation

CONTRACTS OF EMPLOYMENT

- Terms of Employment (Information) Act 1994-2001 / Unfair Dismissals Acts, 1977-2003
- Written statement of terms and conditions within 2 months
- Summary of Dismissal Procedure within 1 month
- Fixed Term / Specified Purpose

Different Types of Contract?

“Contract of Service”

(employment contract) V

Staff Reporter

Chauffeur

“Contract for Service”

(commercial contract)

Freelance Writer

Taxi Driver

Employee Vs Contractor

- ❑ Contract of Service V Contract for Service
- ❑ Tests at Common Law
 - Control Test
 - Integration Test
 - Multiple/Economic Reality Test/Business Test (Market Investigations 1969/Denny & Sons 1998)
 - Intent of the parties
 - Right to refuse work
 - Report on Employment Status Group
 - Code of Practice

CONTRACTS OF EMPLOYMENT

Must include:

- Full names of employer and employee
- Address of employer & principal place of business
- Place of work / various places
- Job Description
- Commencement date
- For temporary contracts, duration; for fixed term, date of expiry
- Method of calculation of remuneration

CONTRACTS OF EMPLOYMENT

Must include:

- Payment intervals
- Hours of work / overtime requirements
- Details of rest periods and breaks
- Holidays / paid leave
- Sick pay / pensions (when applicable)
- Notice requirements
- Reference to collective agreements

CONTRACTS OF EMPLOYMENT

Should also include:

- Probationary Period
- Flexibility/Interchangeability
- Requirement regarding shiftwork
- Provision for lay-off/short-time
- Right of Search
- Grievance Procedure
- Company rules and regulations
- Deductions from pay

ANNUAL LEAVE

a) 4 working weeks where at least 1,365 hours worked in an annual leave year

IF NOT

c) One third of a working week for every month where 117 hours is worked

OR

- 8% of hours worked, subject to a max of 4 working weeks

ANNUAL LEAVE

- Hours physically and notionally worked
- Payment in advance
- Timing determined by **employer**
 - One Months Notice
 - Reconcile work and family responsibilities
 - Rest and recreation

PUBLIC HOLIDAYS

- ❑ Nine Statutory Public Holidays
- ❑ Different to Bank Holidays
- ❑ Full-time v Part-time / Casual
- ❑ 4 Options for Giving Entitlement

MATERNITY LEAVE – ENTITLEMENT

- ❑ From 1st March 2007 entitlement increased from 22 weeks to 26 weeks leave.

This leave is known as “Paid Leave” as the employee is entitled to claim social welfare benefit for its duration.

AND

- ❑ 16 weeks additional unpaid leave if requested

MATERNITY LEAVE – ENTITLEMENT

- ❑ Leave must begin at least 2 weeks in advance of confinement date and end not earlier than 4 weeks after the child is born
- ❑ Leave may be extended in certain circumstances

MATERNITY LEAVE – NOTICE

Notification procedures –

- Maternity/Additional Maternity Leave
 - *At least 4 weeks in advance of commencement of leave*
 - *In the form of written notification with certificate*

- Return to Work
 - 4 weeks in all circumstances (i.e. return from Maternity and Additional Maternity leave)

MATERNITY LEAVE – NATAL CARE LEAVE

- Employee is entitled to time off for ante/post natal care, without loss of pay
- Medical or related appointments
- 2 weeks notice of appointments, except for the first appointment (notice within a week after)
- This entitlement extends for 14 weeks after the birth

ANTE-NATAL CLASSES

Ante-Natal Classes – Non Medical

- Time off **without loss** of pay
- **Mother** – one set of classes (other than the last three classes) once off to cover **all** pregnancies
- **Father** – last 2 classes before the birth (once off)

ADDITIONAL MATERNITY LEAVE AND SICKNESS

- ❑ Entitlement to terminate Additional Maternity Leave in event of sickness of mother:
 - ❑ Subject to the agreement of the employer
 - ❑ Request must be made in writing
 - ❑ Leave will terminate on the agreed date
 - ❑ Absence will then be treated as sick leave

MATERNITY LEAVE – LEAVE FOR FATHERS

- ❑ Father entitled to remainder of leave on death of mother, subject to:
 - ❑ Notification
 - ❑ Production of death certificates, if applicable

- ❑ Entitled to Additional Maternity Leave

ADOPTIVE LEAVE ACT- ENTITLEMENT

Adopting Mothers and Sole Male Adopters

- ❑ From 1st March 2007 entitlement increased from 20 weeks to 24 weeks leave
and
- ❑ 16 weeks unpaid leave
- ❑ Subject to notification procedures

PARENTAL LEAVE – CURRENT SITUATION

- ❑ **14 Weeks** unpaid leave for each child, leave must be taken before the child reaches 8 years of age*
- ❑ The 14 weeks may be taken in a continuous block, or in separate blocks of a minimum period of 6 weeks (more fragmented with employer consent)
- ❑ 1 year continuous service*
- ❑ **6 weeks** written notification
- ❑ Confirmation document signed **4 weeks** before taking the leave

PARENTAL LEAVE – POSTPONEMENT

Postponement for up to 6 months if it would have a substantial adverse effect on business due to:

- unavailability of replacement
- numbers taking leave
- other relevant factors
- seasonal variation** – postponement for two periods of 6 months

PARENTAL LEAVE – EMPLOYMENT PROTECTION

Employment Protection

- Contractual & statutory rights protected (except remuneration)
- Probation/apprenticeship suspended
- Right to return to same job or suitable alternative

FORCE MAJEURE LEAVE

s.13 of Parental Leave Act

Leave with pay

☐ **Qualifying criteria**

- urgent family reasons
- owing to the illness/injury of a specified family member
- employee's immediate presence indispensable at the place where the ill/injured party is

FORCE MAJEURE LEAVE

□ Family Members covered

- child, ward
- spouse, partner
- parent, grandparent
- brother, sister

FORCE MAJEURE LEAVE

- ❑ Subject to a max of:
 - ❑ 3 days in consecutive 12 months
 - or
 - ❑ 5 days in 36 months

- ❑ Completion of prescribed form

- ❑ Part of day taken as FM will constitute one day for the purpose of the Act

CARER'S LEAVE - PURPOSE

❑ Purpose

- ❑ To provide 104 weeks leave in order to provide full-time care and attention to a person requiring it
- ❑ To protect the employment rights of those employees during such absences

CARER'S LEAVE - KEY DEFINITION

□ Relevant Person

A care recipient will be considered to be a *relevant person* if they need continual supervision and frequent assistance throughout the day in connection with normal bodily functions

or

need continual supervision in order to avoid danger to themselves

CARER'S LEAVE

- ❑ To apply for leave:
 - ❑ 12 months continuous service
 - ❑ 6 weeks notice or as soon as is reasonably practical

- ❑ Employer is provided with decision from DSFA

CARER'S LEAVE EMPLOYMENT PROTECTION

- ❑ All statutory and contractual rights protected except
 - ❑ remuneration
 - ❑ annual leave (after 13 weeks)
 - ❑ public holidays (after 13 weeks)
 - ❑ Pensions or any other pay contributions

COMPASSIONATE LEAVE

- No legal entitlement – commonly given due to nature of leave
- Paid time off given to an employee on the death of a family member
- Immediate family members / extended family members

SICK LEAVE

- No legal obligation to provide sick pay
- Contract provision / Custom & Practice
- Social Welfare disability Benefit
- Waiting Days
- Certification
- Control Mechanisms

PART-TIME WORK ACT, 2001

- ❑ Part-time employees should not be treated in less favourable manner to that of comparable full-time employees
- ❑ Statutory and contractual/voluntary “company” benefits
- ❑ Discrimination only on objective grounds
- ❑ Pro-rata application of entitlements

INTERNET/EMAIL POLICY

Reasons for policy

- protect company image
- use electronic resources in productive manner
- avoid placing company at risk for legal abuse

INTERNET/EMAIL POLICY

What to include?

- Use of email – benefits, risks
- Rules for email/internet use
- Unacceptable use - clear list
- Equality implications
- Company equipment
- Company monitor use
- Breach of use - discipline

BULLYING/HARASSMENT

Sexual Harassment – “unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, humiliating or offensive environment for the person”

BULLYING/HARASSMENT

Harassment – “acts, requests, words or gestures, production, display or circulation of material that is unwanted by the recipient, related to any of the discriminatory grounds and being conduct which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, humiliating or offensive environment for the person”

BULLYING/HARASSMENT

Bullying – “Workplace bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual’s right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a once off incident is not considered to be bullying”

BULLYING/HARASSMENT

- Shouting/swearing at staff
- Visual display of material
- Freezing out, ignoring or excluding
- Physical contact
- Staring, leering, aggressive gestures
- Spreading malicious rumours

BULLYING/HARASSMENT

- Persistent negative attacks
- Abusing a position of power
- Objectives with unreasonable or impossible deadlines
- Removing areas of responsibility
- Withholding work related information
- Over-monitoring of employees work

BULLYING POLICY

What to include?

- Clearly state not acceptable in workplace
- Clear onus on management & staff that behaviour will not be tolerated
- Definition of bullying/harassment - list but do not limit list
- Outline effects – physiological/psychological and behavioural effects
- Grievance Procedures
- Informal/Formal procedure
- Investigation

BULLYING POLICY

□ Action after investigation

- Warnings
- Transfer

□ Points to Note

- Conflict of evidence – balance of probabilities
- Protection against intimidation
- False/Malicious complaints
- Communication/Training

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