ARTHUR COX

Group Briefing

10 Key Differences between Employment Laws in England and Ireland

INTRODUCTION

The Employment Law Group at Arthur Cox frequently advises English based employers on employment law and industrial relations issues relating to their Irish operations, which are often managed by English based HR professionals. In our experience, while the employment laws of both jurisdictions are similar, there is at times a misconception that the laws are identical. While there is undoubtedly a great deal of similarity in employment laws, given both are common law jurisdictions and members of the European Union, there are important, and often significant, differences.

KEY DIFFERENCES

The table below summarises 10 key differences of note.

ISSUE	IRELAND	ENGLAND
1. Unfair Dismissal – qualification period, time limit and maximum compensatory award	Save for certain limited exceptions, the qualification period for an unfair dismissal claim is 1 year's continuous service. Claims must generally be brought within 6 months of dismissal, however, this time period can be extended by a maximum period of 6 months. The maximum compensatory award is usually 104 weeks' remuneration (not base salary), subject to establishing actual financial loss.	Save for certain limited exceptions, the qualification period for an unfair dismissal claim is 2 years' continuous service. Claims must generally be brought within 3 months of dismissal, however, the time limit can be extended where not reasonably practicable to bring the claim in time. The maximum compensatory award is 1 year's salary or £78,335, whichever is the lesser.
2. Settlement/Compromise Agreements	No statutory recognition of settlement agreements, however they can be contractually binding on employees. Consideration must be provided in exchange for the waiver of claims and employees must be advised in writing of their right to take independent legal advice on the agreement. There is no strict requirement that the employee actually takes legal advice on the agreement and an independent adviser certificate is not required. However, the absence of such advice can expose the contract to subsequent challenge on the grounds of undue influence, unconscionable bargain, etc.	Statutory recognition of settlement agreements under the Employment Rights Act 1996. In order for the settlement agreement to be legally enforceable, certain statutory conditions must be met, including that the employee must have received advice from a relevant independent adviser and the adviser must be identified in the agreement.
3. Employment Injunctions	Employees frequently seek interlocutory injunctions to restrain disciplinary processes or dismissals in certain circumstances (e.g. where an employer has failed to follow a contractual disciplinary procedure, failed to ensure that the decision was compliant with governance/authority requirements, failed to afford fair procedures in conducting the disciplinary process or terminated the employee's employment in breach of contract).	Employees can obtain interlocutory injunctions to restrain disciplinary processes and dismissals, however, there has been a traditional reluctance on the part of employees to seek, and for the Courts to grant, them. It is generally accepted that a gross breach of contract is required in order for an applicant to secure an interlocutory injunction and that a Court will not grant an injunction in respect of relatively trivial irregularities.

4. Redundancy Entitlements	Statutory redundancy payments depend on length of service and salary and are calculated as follows: » Two weeks' pay per year of service plus a bonus week's pay. » A week's pay is capped at €600. » There is no maximum statutory redundancy payment.	Statutory redundancy payments depend on age, length of service and salary and are calculated as follows: » Half a week's pay for each year of service under 22. » One week's pay for each year of service between ages 22 and 40. » One and a half week's pay for each year of service age 41 and over. » A week's pay is currently capped at £475 and the maximum statutory redundancy payment is currently £14,250.
5. Tax Treatment of Termination Payments	A statutory redundancy payment is exempt from income tax and social insurance contributions. Certain tax reliefs are available to employees receiving termination payments and these can be applied at source without prior Revenue Commissioner approval. By way of example, the Basic Exemption entitles an employee to relief on a termination payment calculated as follows: €10,160 plus €765 per each complete year of service. Various other reliefs are also available. The lifetime restriction on the tax relief that an employee can claim on termination payments is €200,000.	The first £30,000 of a payment which is paid in connection with the termination of employment is tax free, as long as it is not otherwise taxable as earnings. Any sum excess in excess of £30,000 is subject to income tax but is not subject to national insurance contributions.
6. TUPE – Information and Consultation Period & Service Provision Changes	Employers must commence the statutory information process, and if triggered, consultation process, where reasonably practicable not later than 30 days, and in any event in good time, before the transfer date. There are no provisions permitting "micro-employers" to inform and consult employees directly on transfers. No automatic TUPE transfer on a service provision change. Application of TUPE depends on traditional TUPE assessments, i.e. stable economic entity which retains its identity post transfer, with factors such as whether or not there is to be a transfer to the new contractor of significant tangible or intangible assets or the taking over by the new contractor of a major part of the outgoing contractor's workforce, in terms of numbers and skills, being relevant.	Employers must inform representatives 'long enough before a transfer to enable consultation to take place'. "Micro-employers" can inform and consult employees directly. Statutory recognition of TUPE transfer where a client contracts for or changes contractor in respect of a service or activity.
7. Statutory Sick Pay	No statutory obligation on employers to pay sick pay. Employees may however have a contractual right to sick pay or their employer might provide it on a discretionary basis. Employees on sick leave can avail of an Illness Benefit payment of up to €188 per week, which is paid by the State after 6 days' absence, subject to qualification under social welfare requirements.	Statutory obligation on employers to pay sick pay of currently £88.45 per week for up to 28 weeks to employees who earn on average £112 or more per week. In addition, employees may have a contractual right to receive additional sick pay over statutory minimum or they might receive it on a discretionary basis.
8. Working Time – Maximum Working Week	Employees cannot generally opt out of the statutory maximum (averaged) working week of 48 hours.	Employees can opt out of the statutory maximum (averaged) working week of 48 hours by signing a valid "Opt-Out" agreement. Employees however retain the right to subsequently "opt in".
9. Agency Workers	From day one, agency workers are entitled to no less favourable treatment with respect to terms and conditions relating to pay, working time, night work, rest periods/rest breaks, overtime, annual leave and public holidays when compared to the terms and conditions the end user would have offered if the agency workers had been recruited directly.	Agency workers are only entitled to no less favourable treatment in respect of basic working and employment conditions after 12 weeks on assignment.
10. Collective Bargaining	There is no statutory obligation on an employer to collectively bargain with trade unions or employees. However, if an employer does not collectively bargain with a trade union or an "excepted body" (e.g. an independent staff association which negotiates in relation to employee terms and conditions), a trade union can refer a dispute over its members' terms and conditions to the Labour Court, which can ultimately issue a legally binding determination on the dispute referred but not on union recognition/collective bargaining.	An independent trade union that wishes to be recognised by an employer for collective bargaining purposes can seek recognition by following a statutory procedure. This can result in a legally binding order obliging the employer concerned to collectively bargain with the union about pay, hours and holidays.

DIFFERENCES IN PRACTICE AND PROCEDURE

Aside from the principal differences in employment laws outlined above, there is a marked difference in practice and procedure in the progression of employment claims to hearing in the respective jurisdictions. While case management procedures apply in England and there are strict obligations with regard to the preparation of joint bundles of documents, witness statements, etc., no such arrangements currently apply in Ireland.

However, there has been recent significant reform of the employment rights bodies and Tribunals in Ireland, with the enactment of Workplace Relations Act 2015, which is to commence later this year. This Act establishes a new first instance body, the Workplace Relations Commission ("WRC"), from which all appeals will be heard by the Labour Court. These two bodies will replace the current system which includes first instance hearings at the Labour Relations Commission, the Equality Tribunal and the Employment Appeals Tribunal, with diverse routes of appeal and a separate enforcement regime operated under the aegis of the National Employment Rights Authority.

Nevertheless, differences in practice and procedure will remain. By way of example, employment claims heard at first instance before adjudication officers of the WRC will be held in private and evidence will not be given on oath. In addition, it is not envisaged that case management discussions will be held or that there will be a requirement for written submissions/ witness statements to be exchanged in advance of first instance hearings.

CONCLUSION

The above comparative analysis outlines some of the key differences between employment laws and practice and procedure in England and Ireland. It also highlights the benefit of seeking support locally where employment law or industrial relations issues arise in a foreign, albeit familiar, jurisdiction.

OUR TEAM

For further information on the differences between employment laws and practice and procedure in England and Ireland, please contact a member of the Arthur Cox Employment Law Group.

SEAMUS GIVEN
HEAD OF EMPLOYMENT GROUP
+353 1 618 0565
seamus.given@arthurcox.com

CIAN BEECHER
PARTNER
+353 1 618 0539
cian.beecher@arthurcox.com

ELAINE METTLER
ASSOCIATE
+353 1 618 0597
elaine.mettler@arthurcox.com

LOUISE O'BYRNE
ASSOCIATE
+353 1 618 0526
louise.obyrne@arthurcox.com

DEBORAH DELAHUNT
ASSOCIATE
+353 1 618 0302
deborah.delahunt@arthurcox.com

ZELDA CUNNINGHAM
ASSOCIATE
+353 1 618 0617
zelda.cunningham@arthurcox.com

MICHELLE MALONEY
ASSOCIATE
+353 1 618 1137
michelle.maloney@arthurcox.com

KEVIN LANGFORD
PARTNER
+353 1 618 0588
kevin.langford@arthurcox.com

GILL WOODS
OF COUNSEL
+353 1 618 0544
gill.woods@arthurcox.com

MICHAEL DOYLE
ASSOCIATE
+353 1 618 0502
michael.doyle@arthurcox.com

SARELLE BUCKLEY
ASSOCIATE
+353 1 618 0456
sarelle.buckley@arthurcox.com

GRACE GANNON
ASSOCIATE
+353 1 618 1185
grace.gannon@arthurcox.com

FRAN MORAN
ASSOCIATE
+353 1 618 0657
fran.moran@arthurcox.com