

Employment rights enforcement bodies, which act?



Previously, the Irish Veterinary Journal covered three of the main bodies who work to enforce employment rights in Ireland to clarify which body is responsible for each piece of legislation, how complaints are made and what decisions these bodies can make.

In part two, Derek McKay of Adare HRM speaks to Peter Bishton of Veterinary Ireland, looking at six pieces of common legislation, the relevant bodies for complaints and the redress available

Of the three main bodies – the Rights Commissioners, the Labour Court and the Employment Appeals Tribunal – it is often unclear which avenue a complaint will go down and where it goes thereafter. Good examples to follow would be cases under the following pieces of legislation:

- Unfair Dismissals Acts 1977-2007;
- Organisation of Working Time Act 1997;
- Terms of Employment (Information) Act 1994-2001;
- Payment of Wages Act 1991;
- Redundancy Payments Acts 1967-2007; and
- Minimum Notice and Terms of Employment Acts 1973-2005.

UNFAIR DISMISSALS ACTS 1977–2007

The Acts apply to employees over the age of 16 with at least 12 months of continuous service (with some exceptions). If an employee has a complaint under the Unfair Dismissals Acts, they may present a claim of unfair dismissal to the Rights Commissioner if both parties are in agreement. If both parties are not in agreement to have a Rights Commissioner hear the case, then an application should go directly to the Employment Appeals Tribunal.

Where a claim is heard by a Rights Commissioner, the Rights Commissioner will issue a recommendation or a decision and either party may appeal that recommendation to the

Employment Appeals Tribunal. The Rights Commissioner's decision is not legally binding. The determination issued by the Employment Appeals Tribunal is legally binding and may be appealed to the Circuit Court.

Redress under the Acts

Employees who have been unfairly dismissed can, under the Acts, be awarded either:

- (i) reinstatement to their position;
- (ii) re-engagement to their position or in a suitable alternative position on conditions which are reasonable;
- (iii) where financial loss has been sustained by the employee, financial compensation in respect of such loss is incurred, subject to a maximum of two years remuneration; or
- (iv) where no loss has been sustained by the employee, financial compensation may be awarded subject to a maximum award of four weeks remuneration.

REDRESS UNDER COMMON LAW

An employee may seek redress in respect of a dismissal at common law but the employee must choose between a common law action and a claim under these Acts.

ORGANISATION OF WORKING TIME ACT 1997

Complaints of non-compliance with the Organisation of Working Time Act are referred to the Rights Commissioner by filling out a complaint form in relation to breaches of

legislation relating to any of the following:

- Rest periods;
- Sunday work;
- Maximum working hours; and
- Annual Leave/Public Holidays.

The recommendation of the Rights Commissioner may be appealed to the Labour Court by filling out an appeal form. Annual leave/public holidays due may also be claimed in a direct claim to the Employment Appeals Tribunal if the employee is making a claim under Redundancy Payments Acts 1967-2007, Minimum Notice and Terms of Employment Acts 1973-2005 or Unfair Dismissals Acts 1977-2007.

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Redress under the Acts

A person found guilty of offences relating to failure to keep records, double employment, obstruction of inspectors or non-compliance with regulations may face fines of up to €1904.61 and an extra €634.87 a day for a continuing offence.

Employers may face compensation claims for amounts up to two years of an employee's salary for breaches of other provisions of the Act. Such amounts may be determined by the Rights Commissioner and the Labour Court.

TERMS OF EMPLOYMENT (INFORMATION) ACT 1994–2001

Complaints of non-compliance with the Terms of Employment Information Act are referred to the Rights Commissioner by filling out a complaint form detailing whether the complaint relates to one of the following:

- Failure to comply with the requirement to give a written statement of terms and conditions; or
- Failure to notify changes to written statement.

Redress under the Acts

The recommendation of the Rights Commissioner shall do one or more of the following:

- (a) declare that the complaint was or was not well-founded;
- (b) (i) confirm all or any of the particulars contained or referred to in the written statement;
(ii) alter or add to the written statement for the purpose of correcting any inaccuracy or omission in the statement;
- (c) order the employer to give the employee a written statement containing such particulars as may be specified by the Rights Commissioner;
- (d) order the employer to pay the employee compensation of a maximum of four weeks remuneration.

In relation to (b) (ii) outlined above, where the Rights Commissioner alters or adds to the written statement for the purpose of correcting any inaccuracy or omission, the written statement as added to or amended by the Rights Commissioner shall be deemed to have been given to the employee by the employer. The Rights Commissioner's recommendation may be appealed to the Employment Appeals Tribunal.

PAYMENT OF WAGES ACT 1991

Complaints of non-compliance with the Payment of Wages Act are referred to the Rights Commissioner by filling out a complaint form in relation to breaches of legislation relating to any of the following:

- Unlawful deductions from wages
- Non-payment of wages

Rights Commissioner hearings for the Payment of Wages are heard in public.

Redress under the Acts

If the Rights Commissioner decides that a complaint is well founded, he/she shall order the employer to pay compensation to the employee.

The maximum compensation the Rights Commissioner can award is:

- (a) the net wage, after all lawful deductions, that would have been paid to the employee in respect of the week immediately preceding the unlawful deduction (or if the complaint related to a payment, the net wages that were paid to the employee in respect of the week immediately preceding the date of the payment); or
- (b) if the amount of the deduction (or payment) is greater than the wage specified at (a), twice the amount of the deduction (or payment).

The Rights Commissioner's recommendation may be appealed to the Employment Appeals Tribunal by filling out the form T1-B.

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS 1973–2005

Complaints of non-compliance with the Minimum Notice and Terms of Employment Acts are referred to the Employment Appeals Tribunal by filling out the T1-A form.

Redress under the Acts

In assessing loss with regard to notice, the Tribunal will take into account not merely salary/wages but also all other remuneration, such as commission earnings, regular and rostered overtime and other fringe benefits.

The Tribunal will only award an employee compensation for any loss they sustained due to their employer's default in failing to give proper notice. However, if the employee was sick during the notice period or was on strike, no compensation is payable. A determination of the Tribunal in notice cases may be appealed to the High Court on a point of law.

REDUNDANCY PAYMENTS ACTS 1967–2007

Complaints of non-compliance with the Redundancy Payments Acts are referred to the Employment Appeals Tribunal by filling out the T1-A form. Complaints can relate to non payment of redundancy, dispute over how payment was calculated, dispute over length of service, failure to allow time off to look for new employment and disputes around continuity of service.

Redress under the Acts

Failure to comply with the requirements of the acts leaves an employer open to a fine of up to €3,000, along with the payment of any outstanding payments due to the employee. A claim under the Unfair Dismissals Acts by an employee who has made a parallel claim at common law in respect of the same dismissal will be accepted by the Tribunal. However, at a specified stage in one or other of the respective procedures, the 'second' claim is rendered ineffective. A determination of the Tribunal in notice cases may be appealed to the High Court on a point of law.

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