

Employment rights enforcement bodies: which one?



Over the past number of years, there has been a significant increase in complaints to the main bodies who work to enforce employment rights in Ireland. There is often some confusion on the part of claimants and employers as to which body deals with which piece of legislation, how complaints are made and what decisions these bodies can make.

Here, in the first of two articles, Derek McKay, Managing Director of ADARE HRM, speaks to Peter Bishton of Veterinary Ireland, looking at three of the bodies, how complaints are made and decided upon in relation to relevant pieces of legislation

The past two years have seen a doubling and tripling of certain claims against employers taken to third-party bodies in relation to various pieces of employment legislation. It is not always clear which route is taken for which piece of legislation. Furthermore, it is not always clear which route is legally binding. The main bodies dealing with the enforcement of employment rights in Ireland are:

- National Employment Rights Authority (NERA);
- Equality Tribunal;
- Health and Safety Authority;
- Rights Commissioners;
- Labour Court; and,
- Employment Appeals Tribunal.

Taking three of the bodies mentioned above, 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 after it has been lodged. 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.

RIGHTS COMMISSIONERS

Rights Commissioners investigate disputes, grievances and claims that individuals or small groups of workers refer in relation to, but not limited to, the following:

- Unfair dismissal;
- Working time, breaks, rest periods, night work, Sunday work;
- Failure to give written terms and conditions;
- Fixed-term work;
- Part-time work;
- Unauthorised deductions from wages;
- Holidays/annual leave; and,
- Maternity, adoptive, parental, carer's/Force Majeure Leave.

Complaints to the Rights Commissioner are submitted on complaint forms, which are available from the Labour Relations Commission (LRC). The complaint is then sent to the employer. Either party may object to a Rights Commissioner hearing in cases referred under the Industrial Relations Acts 1969-2004 or under the Unfair Dismissals Acts, 1977-2007.

Rights Commissioner hearings take place in private, except where the dispute has been referred under the Payment of Wages Act 1991. Rights Commissioners issue findings of their investigations in the form of either decisions or non-binding recommendations, depending on the legislation. Appeals of Rights Commissioner decisions may be made either to the Labour Court or the Employment Appeals Tribunal depending on the piece of legislation.

LABOUR COURT

The Labour Court deals with complaints of breaches of Registered Employment Agreements, appeals of decisions of the Equality Tribunal or Rights Commissioners, or direct referrals of complaints under the Industrial Relations Acts where the employer did not agree to have the case heard by the Rights Commissioner or where parties to a trade dispute have agreed in advance to accept the Labour Court's recommendation. Complaints/appeals to the Labour Court are lodged on the appropriate appeal/complaint form available from the Labour Court.

Labour Court recommendations, for the resolution of trade disputes, are not legally binding. However, certain other categories of cases dealt with by the Labour Court in which the decision of the Court (as expressed in a determination or order or decision, depending on the legislation under

which heard) is enforceable. Such cases include:

- Appeals of decisions of Rights Commissioners under the Organisation of Working Time, National Minimum Wage, Protection of Employees (Part-Time Work), or Protection of Employees (Fixed-Term Work) Acts;
- Appeals of decisions of Equality Officers under equality legislation;
- Dismissal cases under equality legislation; and,
- Complaints of breaches of Registered Employment Agreements.

EMPLOYMENT APPEALS TRIBUNAL

The Employment Appeals Tribunal (EAT) deals with direct claims under the following acts by filling out the form T1-A (available from the EAT):

- i) Redundancy Payments Acts, 1967-2007;
- ii) Minimum Notice and Terms of Employment Acts, 1973-2005;
- iii) Unfair Dismissals Acts, 1977-2007; and,
- iv) Organisation of Working Time Act, 1997 (for holidays due if you are claiming under (i-iii) above.)

Appeals of Rights Commissioner recommendations under the following acts are also dealt with by the Tribunal (by filling out the form T1-B):

- Unfair Dismissals Acts, 1977-2007;
- Protection of Employees (Employers' Insolvency) Acts, 1984-2001;
- Organisation of Working Time Act, 1997;
- Payment of Wages Act, 1991;
- Terms of Employment (Information) Act, 1994 and 2001;
- Maternity Protection Act, 1994 and 2004;
- Adoptive Leave Act, 1995;
- Protection of Young Persons (Employment) Act, 1996;
- Parental Leave Act, 1998;
- Protections for Persons Reporting Child Abuse Act, 1998;
- European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003;
- European Communities (Protection of Employment) Regulations, 2000;
- Carer's Leave Act, 2001; and,
- Competition Act, 2002.

Recommendations of the Rights Commissioner may also be referred to the Tribunal for implementation (by filling out form T1-D). A determination of the Tribunal is recorded in a document signed by the chairman and sealed with the seal of the Tribunal. Written determinations of the Tribunal are final and conclusive, subject only to the appropriate avenue of legal appeal. All determinations of the Tribunal on any question referred to it under any of the Acts (with the exception of the Unfair Dismissals Acts), may be appealed by either party to the High Court on a point of law. A determination of the Tribunal under the Unfair Dismissals Acts may be appealed to the Circuit Court by a party within six weeks from the date of service of the determination.