



Employment Law Update

November 2008

Health and safety

It was recently European Health and Safety week and the European Agency for Safety and Health at Work which was set up in 1996 ran a campaign in all EU member states to highlight the importance of assessing health and safety risks. Risk assessment is key in the approach to prevent occupational accidents and ill health. The Agency has published a new report on risk assessment which showcases ways in which workplace risks can be managed and reduced. Health and safety is not just about accident prevention but covers a wide range of issues such as musculoskeletal disorders, noise and stress and other health related risks. It is important to remember that all Irish employers must have policies in place that comply with the Safety, Health and Welfare at Work Act 2005.

Link to report

<http://osha.europa.eu/en/publications/magazine/magazine11/view>

Parental leave changes

The Parental Leave Act 1998 entitles men and women to avail of unpaid leave from their employer to take care of young children. It was amended recently by the Civil Law (Miscellaneous Provisions) Act 2008 to enable parents employed by the same employer, with the employer's consent, to transfer their parental leave to each other in whole or in part.

Employment Law Compliance Bill 2008

The Employment Law Compliance Bill 2008 intends to achieve higher levels of compliance with employment law and protect lower paid employees in vulnerable industries and casual/seasonal employment. It aims to reflect commitments made in Towards 2016 regarding the consolidation of employment legislation and will bring together over 20 Acts on employment law into a single Act. The Bill when enacted will increase the administrative obligations and duties of employers including the keeping of detailed records for each employee and an obligation to put up notices in the workplace informing employees of their rights and entitlements and how to contact the National Employment Rights Authority (NERA) for information about their rights.

The Bill also proposes a number of new criminal offences where employers fail to comply with basic employment law obligations. It will be interesting to see whether the criminal offences in the Bill will be scaled down. It is currently under consultation between the Department of Enterprise, Trade and Employment and the social partners.



PRSA pension prosecution

The Pensions Board, as part of its regulatory role, monitors employers' compliance with the legislation regarding personal retirement savings accounts. The legislation obliges employers to offer access to a PRSA to all employees who have completed 6 months of service and who are not eligible to join the employer's pension scheme or where the employer has no pension scheme.

On 14 October 2008 a company was fined €5,000 and ordered to pay the Board's costs of €1695 for failing to comply with the Board's information requests on PRSA obligations. This is the maximum fine possible for this offence. The company had previously failed to pay an on-the-spot fine of €2,000 imposed by the Board for the company's failure to cooperate with their request for information on occupational pensions schemes established for the benefit of the company's employees and this led to the court prosecution.

Disability by association

Case: Coleman v Attridge Law and Law C-303/06

Background. Directive 2000/78/EC established a general framework for equal treatment in employment and occupation (the Directive).

Facts. Ms Coleman brought a claim in an English tribunal alleging, among other things, that she had suffered discrimination contrary to the English Disability Discrimination Act 1995 (which was amended in 2004 to implement the Directive). She is not disabled, but her son is and she is his primary carer. The preliminary issue before the tribunal was whether she was entitled to bring a claim based on association with a disabled person, rather than any disability of her own under the Framework Directive. The tribunal asked for a ruling from the European Court of Justice (ECJ).

Decision. On 17 July 2008 the ECJ held that the Directive could be interpreted as prohibiting direct discrimination and harassment on grounds of disability in respect of a person who is not disabled but is the primary carer of a disabled child. Less favourable treatment or harassment of an individual on grounds of the disability of a person closely associated to them is therefore unlawful under the Directive. Article 1 of the Directive aims to combat all types of discrimination on the grounds of disability (among other things) and is not defined by reference to a particular category of person.

Comment. In Ireland discrimination against carers by association with disabled people is prohibited by section 4 of the Equality Act 2004 which amends section 6 of the Employment Equality Act 1998. Depending on the circumstances, therefore Irish employers may face claims for disability discrimination where they unreasonably reject requests for flexible working by employees who are primary carers of disabled individuals.



“No show” clauses in employment contracts

Case: Tullett Prebon Group Limited v Ghaleb El-Hajjali [2008] EWHC 1924

Background. A penalty clause is a clause under which the money payable is intended to apply undue force to the other party to perform its obligations under the contract. A liquidated damages clause sets out a fixed sum agreed by the parties to a contract to be payable on breach by one of the parties. If a liquidated damages payment constitutes a penalty clause it is void

Facts. Tullett, a brokerage firm hired a senior derivatives broker Mr El-Hajjali (E) from a competitor, Link. Meetings between Tullett, E and his solicitor took place over a six month period. E obtained an indemnity from Tullett if he should be sued by Link. The employment contract was finally concluded between the parties and included a “no show” clause. This provided that E would pay Tullett a specified amount (equal to 50% of salary and 50% of any sign on payment) if he did not start work with them. After signing the contract, E decided to remain with Link. Tullett unsuccessfully tried to find someone else to take the job and then sued E for £300,000 under the “no show” clause for liquidated damages. E argued that the clause was a penalty clause and therefore void.

Decision. The English High Court held that it was a liquidated damages clause, rather than a penalty clause. Therefore E was liable to pay the amount due under the clause. In coming to its decision the court noted that the parties were equal negotiating partners, E had taken legal advice and his solicitors had warned him that if he did not start work, Tullett was likely to sue him.

Comment. It is rare for an employee to be sued for breach of an employment contract and an employer would normally only go to the expense of pursuing a claim against a very senior prospective employee. Note that although this is an English case, it may have persuasive value in the Irish courts.

Dealing with redundancies briefing

Beauchamps will host an in-house breakfast briefing "*Dealing with Redundancies*" on 26 November 2008. Dairine Walsh, solicitor, will speak about the legal aspects of redundancies and John Horgan, former chairman of the Labour Court and independent human resource consultant, will speak about redundancy and practical industrial relations issues. If you would like to attend this event please contact Maree Kirby on m.kirby@beauchamps.ie or to register online go to the events section of our website.

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