



NEW EMPLOYMENT LAW LANDSCAPE

MARK O'CONNELL BL SAYS THAT THE NEW EMPLOYMENT LAW PROCEDURES WILL SIMPLIFY MATTERS AND REDUCE DELAYS

Soon after taking office two years ago, the government embarked on its plan to reform the workplace grievance process. Born out of the need to save taxpayers' money, the reform programme in essence is premised upon the abolition of many of the institutions dealing with employment rights and the amalgamation of their functions into a single entity. The theory is that the new landscape will protect all of the existing rights but under the umbrella of the rationalised mechanism.

At this point in time, the system is in transition phase. Not surprisingly, there is considerable confusion among practitioners as to what exactly to do with employment claims. It is hoped that this article will clarify this.

So what is the plan?

The government intends to stand down all of the following statutory institutions:

- The Employment Appeals Tribunal
- The Equality Tribunal
- The National Employment Rights Authority
- The Labour Relations Commission
- The Rights Commissioners Service

In its place, will be established the new Workplace Relations Commission (WRC) through which all claims arising out of a person's employment will be processed.

In the first instance, an Early Resolution Service (ERS) will be available to complainants. This will be a voluntary system which will build on the current role of the Rights Commissioners Service

and the mediation service of the Equality Tribunal.

In default of a settlement in the ERS, the dispute will be referred to a single-member of the WRC. This person will be selected from a panel adjudicators drawn from the civil service, trade unions, employer groups, human resources and the legal profession. Notably, the adjudicator will not have to be legally trained although some lawyers may be appointed. Regardless, these roles will be filled by "high-calibre" people who will be given appropriate training.

Complainants can represent themselves or opt to have solicitors and/or counsel make their case.

The WRC adjudicators will make binding determinations. An automatic right of appeal will be provided – not to the

Circuit Court but to an expanded Labour Court. Currently, the Labour Court has a chairperson, two deputy-chairpersons. The number of deputy chairpersons is to increase to four. No decision has been taken regarding the requirement that the chairperson and deputy chairperson be legally qualified.

The current panel of six ordinary members nominated by the ICTU and IBEC is to be expanded to facilitate an increase in the number of Labour Court divisions hearing appeals.

There will be no automatic right of appeal from the Labour Court. However as currently provided for, points of law can be referred to the High Court.

All complaints will be made on a uniform document known as the Workplace Relations Complaint Form. This form replaces 34 different forms which have been used by employees making complaints to the existing institutions.

The new form is made up of five pages including one page of guidance notes. It has the capacity to record 117 complaints to five different institutions. It must be completed on-line. Once the required fields are filled in, it must be printed off, signed and posted. Within two months however, the form will be capable of being completed and submitted on-line.

What is the situation at present?

The legislation required to implement these changes is called the Workplace Relations Bill 2013. It has yet to be published by the government but it is currently being drafted in the Attorney General's office.

A senior source in the Department of Jobs, Enterprise, and Innovation told Parchment that the legislation would be enacted by the middle of this year.

In the meantime, institutions such as the EAT, the Rights Commissioners Service and the Equality Tribunal continue to exist until such point as the legislation establishing the WRC is enacted.

The only significant procedural change is that the Workplace Relations Complaint Form is already in use. Completed forms are submitted to the single contact portal which is known as the Workplace Relations Customer Service (WRCS). This is a new division of the Department of Jobs, Enterprise and Employment and its address is simply O'Brien Road, Carlow. Its website can be accessed at www.workplacerelations.ie

Once the form is received by the WRCS, it is sent to the institution appropriate to the claim.

For instance a claim for unfair dismissal,

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which used to start off its life as a Form T1A, is now made on the new Workplace Relations Complaint Form. After it is received by the WRCS in Carlow, it is remitted to the Employment Appeals Tribunal in Dublin where it is listed for hearing.

The Employment Appeals Tribunal will not receive any more cases after the new WRC is formally established. However it will exist until such time as it processes all the claims before it including the legacy cases.

Government officials believe that apart from making significant savings in the costs of running the institutions which are going to be closed, the new regime will be quicker and easier to use than the multi-tentacle arrangement which has evolved over recent decades.

The aspiration is that the lags in the current system – it takes 90 weeks to get a case on in the EAT and over 100 weeks in the Equality Tribunal – will be freed up. In order to fulfil its great expectations, the new architecture will have to receive sufficient resources to turn over of claims in a timely manner. The aim is to ensure that decisions in all cases will be reached within three months of the date of application and that the decisions will be communicated to the parties within 28 days.

There will be no fee for using the WRC which will not be permitted to make costs orders which are common in the civil courts.

A detailed outline of the new system is contained in a document entitled *Legislating For A World-Class Workplace Relations Service*. It was published last July by Richard Bruton TD, the Minister for Jobs, Enterprise and Innovation after consultation with interested parties and is available on www.workplacerelations.ie

What do the critics say?

There are many critics and not surprisingly, they are mainly to be found in the vicinity of Inns Quay. The backdrop to their opposition is a perhaps cynical opinion that the removal of lawyers from the country's rights systems seems to be an unstated aim of the current government.

While the need for reform is admitted, they say that improvements can be achieved by a certain amount of streamlining. But essentially, they believe that key parts of the system – the Employment Appeals Tribunal in particular – need more resources and should not be wound down.

The new WRC is cited in support of the suspicion about the motivation of the government to extricate lawyers from the decision-making process in the arena of employment law. Unlike in the Employment Appeals Tribunal, a forum in which complicated legal issues are examined and decided upon by three-person divisions chaired by lawyers, the WRC may make its determinations without any involvement of solicitors or barristers.

They say that lay-judges will inevitably make mistakes in the interpretation of the law or about the tricky task of upholding of people's rights. This will lead to a flood of judicial review applications in the High Court. In doing so, it will make a joke of the notion that people of modest means will have greater access to justice. Instead, they fear that the assertion of legal entitlements will become the preserve of the parties with the deepest pockets, those who can afford to pursue their cause in the High Court.

The gloomy belief that the new system will not give proper expression to people's statutory employment rights has led to speculation of a constitutional test in the Superior Courts. Given that most of people's employment rights are grounded in EU legislation, a challenge might also be taken under the European Convention on Human Rights.

Proponents of the new system insist that this is an over-reaction. They say that the non-legal determination of complex employment rights is long established in this country. The Labour Court has been giving determinations since 1946, the Rights Commissioners have been handing down recommendations since 1969 and the Equality Tribunal, comprising ten lay equality officers, has without clamour, been giving rulings since 1998.

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