

LAWYERS INTERNATIONAL NETWORK FOR EXECUTIVES AND EMPLOYEES

Factsheet: The rights of International Executives and Employees to bring employment claims in Ireland.

If the parties to a dispute have connections with a number of different countries, it can often be difficult to work out which country's laws apply. The law which applies may be stated in the employment contract or in some instances there may be a choice between a number of different jurisdictions. There are also currently six different fora in which to make an employment claim in Ireland, therefore it is important to consider the type of claim that is being taken in each case carefully in advance. Claims are divided into claims under contract and claims pursuant to statutory rights.

1. Contract law

Pursuant to the Terms of Employment (Information) Act 1994 - 2001, employment contracts in Ireland are governed by contract law and should comply with this Act. The Act obliges employers to provide an employee with a written statement of the basic terms under which they are employed within 2 months of commencing employment. This should include details of the place of work, pay, overtime, hours, holidays, sick pay and the notice to be given where either an employer or employee wishes to terminate the contract.

When will Irish Law govern your Contract of Employment?

If the employment has an international dimension, it is often provided in the contract which country's law applies. If it does not, and the parties are both domiciled within an EU Member state, the decision of which law applies may be governed by the Brussels Convention 1968. Domicile means where a person resides and intends to do so permanently. The Convention states that a person should be sued in the Courts of the State in which he or she is domiciled. There are, however, some exceptions to favour employees and to protect those seen as economically or socially vulnerable. As a result, cases are often initiated in the country in which the employee resides.

The Rome Convention 1980 applies to both EU and non-EU Member States, although it is only enforceable by Courts within the EU. This Convention allows parties to choose what law they wish to govern a contract. This is not confined to the law of an EU Member State. As such, the law of any country can be argued before the Irish Courts. However, the Convention also aims to protect employees and provides that in the absence of a choice of law, the governing law should be that of the country where the employee habitually carries out work. If an employee does not habitually carry out work in any one State, either the law of the State in which the employer is situated or the law of the jurisdiction in which it appears the contract is most closely associated, applies.

If the employee is based outside of Ireland, the position is more problematic and will depend largely on the law of the particular country where the employee carries out work. In such instances, specific advice should be sought.

How can contract law claims be brought in Ireland

A breach of contract claim can be pursued in the District Court, Circuit Court or High Court based on the value of the claim.

Time Limits

The plaintiff or claimant must instigate proceedings within six years from when the breach occurs.

Compensation

A Plaintiff can be awarded damages up to the value of the loss, and compensation. Generally where the plaintiff is successful in Court proceedings the plaintiff is awarded party and party legal costs. This covers a substantial part of the legal costs.

Costs

The party that does not succeed will usually be ordered to pay legal costs to the successful party. These costs can be significant depending on the complexity of the matter and the duration of the hearing before the Court.

2. Statutory Claims

There are at least thirty Statutes governing every aspect of employment law. It is not possible to deal with each of them here but the more common ones are set out below. Outside of this, a senior executive or employee will have to determine whether or not they have rights under Irish legislation and whether they can enforce those rights.

i) Unfair Dismissals Claims in Ireland

Irish law provides that in order to fairly dismiss an employee, there must be substantial grounds to justify the dismissal and fair procedures must be followed in effecting the dismissal. Employees must have 12 months continuous service inclusive of notice to make the claim. There are exceptions to the 12 months service, for example where an employee is dismissed due to trade union activity, pregnancy, race, political or religious opinions.

What is a substantial ground for dismissal will depend on the circumstances, but would include redundancy, capability and conduct. Fair procedures also vary depending on the contract of employment and company policy, but at a minimum they must be shown to be fair, to inform the employee clearly of the matters at issue, to provide a right to representation, a right for a hearing and a right of appeal.

Forum

An aggrieved employee can make a claim to the Workplace Relations Service for a hearing before a Rights Commissioner or to the Employment Appeals Tribunal.

Time

An employee has 6 months to make a claim (which can be extended to 12 months in exceptional circumstances).

Remedy

The Rights Commissioner may issue a recommendation which is binding on both parties. A recommendation of the Rights Commissioner may be appealed to the Employment Appeals Tribunal within 6 weeks. The Employment Appeals Tribunal will issue a Determination, which can award re-instatement (the employee returns to work in their old position), re-engagement (the employee returns to work in a new position within the company) and or compensation of up to two years' gross remuneration. Legal costs cannot be awarded to the successful party. Each party bears their own costs.

Appeal

A Determination of the Employment Appeals Tribunal may be appealed within 6 weeks to the Circuit Court. Legal costs will usually be awarded to the successful party and Orders for costs will be made against the losing party.

ii) Discrimination

Discrimination complaints and victimisation claims can be made where there is less favourable treatment of an employee on the grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community. A complaint can also be made for failure to give reasonable accommodation for a disability. Claims can be made where there is discrimination regarding access to employment, conditions of employment or conditions relating to occupational pensions schemes, training, promotion and other issues.

Forum

Claims should be made to the Workforce Relations Service for a hearing before an Equality Officer.

Time Limit

Claims should be made within 6 months of the discrimination act. The time period can be extended to 12 months where there is reasonable cause.

Remedy

The Equality Officer may make a decision requiring the employer to comply with the legislation and to take a specified course of action, or award compensation of up to 2 years' annual remuneration for each complaint. Each party bears their own costs as legal costs are not awarded.

Appeal

An appeal may be made to the Labour Court within 6 weeks.

iii) Payment of Wages

An employee can make a claim if their pay, including commission, bonuses, holiday pay and overtime is not paid or unlawful deductions are made from this. This includes a situation where an employee's pay is reduced without consent.

Forum

A claim is made to the Workforce Relations Service for a hearing before a Rights Commissioner.

Time Limit

Claims should be brought within 6 months of the unlawful deduction (or within 12 months in exceptional circumstances).

Remedy

The Rights Commissioner can order reasonable compensation and repayment of wages for the breach. Legal costs are not awarded and each party bears their own.

Appeal

An appeal lies to the Labour Court within 6 weeks.

iv) Industrial Relations

An employee may bring a claim for a dispute arising out of the employment relationship to the Labour Relations Commission. The industrial relations process is voluntary and the Labour Relations Commission and Labour Court provide expert assistance to resolve industrial relations disputes.

(v) Working Time

An employee can claim for breaches of the Organisation of Working Time Act 1997 including breach of the maximum 48 hours weekly working week, and provisions in relation to rest breaks and notification of overtime.

Forum

A claim should be brought to the Workplace Relations Service for a hearing before a Rights Commissioner.

Time Limit

The claim should be made within 6 months of the breach which can be extended to 12 months where there is reasonable cause.

Remedy

The Rights Commissioner can declare the complaint well-founded, order the employer to comply with the legislation and require payment of compensation that is just and equitable not exceeding 2 years of the employee's remuneration. Legal costs are not awarded and each party bears their own costs.

Other important Statutes include:

1. The Protection of Employees (Fixed-Term Work) Act 2003 provides that where an employee is employed on 2 or more continuous fixed-term contracts after the 14 July 2003 the maximum amount of time an employee can be employed under a fixed term contract is 4 years. Fixed-term contracts may be renewed where there are objective grounds to justify this for a legitimate purpose and where it is appropriate and necessary.
2. Safety, Health and Welfare at Work Act 2005 - this sets out the duties and responsibilities of both employers and employees to protect employees and includes workplace stress. For example, employers must prepare a written Risk Assessment and Safety Statement identifying all potential hazards in the workplace.
3. Protection of Employees (Part-time Work) Act 2001 - this provides for the equal treatment of part-time workers and full-time workers.
4. Minimum Notice and Terms of Employment Acts 1973-2001 - this sets out minimum periods of notice for termination of employment. Notice periods range from one week up to eight weeks depending on length of service.
5. The Protection of Employees (Temporary Agency Work) Act 2012 - provides for the equal treatment in basic working and employment conditions of temporary agency workers.

Firm Information

Hayes solicitors has committed, energetic and specialist legal teams which provide a comprehensive range of legal services to corporate, public and private clients on the international and domestic stage.

The Employment Law Department at Hayes provides expert assistance and has extensive experience advising and representing Senior Executives and employees in all types of contentious and non-contentious employment issues. The Employment Law Team also provides in-house training and seminars to clients. Hayes is widely acknowledged as having one of the foremost employment law teams in Ireland and is recognised as experts in international publications including the Legal 500, Chambers and PLC Which Lawyer? Hayes was established in 1840, making it one of the longest standing firms in Ireland.

Our team provide advices across the full spectrum of employment law from advisory to contentious to transactional matters including:-

- Contractual Terms and Work Practices - including consideration of applicable law and choice of jurisdiction in the context of internationally based staff
- International Workers' Consultation Bodies
- Disciplinary and Grievance Issues, Bullying and Harassment complaints and claims
- Transfer Regulations - in a transnational context
- Industrial Relations and Trade Union issues
- Representation at various Tribunals including the Equality Tribunal, Employment Appeals Tribunal and Civil Courts up to the Supreme Court
- Health and Safety
- Data Protection - including transnational transfer of personal data

Meet the Team

The team is regularly invited to present at specialist conferences both in Ireland and abroad, in the employment law area. The team has presented at Public Affairs Ireland seminars, Legal Island (HR training organisation) and the Institute of Chartered Accountants regarding various topics. Carol Fawsitt and Breda O'Malley are the experts agreed by European Commission to participate in an European Union study on Transfer Regulations and insolvency amongst the 27 member countries.

Other members of our employment law team have also held prestigious appointments related to employment including as a Board Member of the Equality Authority and Vice-Chairman of the Employment Appeals Tribunal for a number of years.

For further information, please see the profiles below:

[Carol Fawsitt](#)

[Breda O'Malley](#)

[Davnet O'Driscoll](#)

[Anne Lyne](#)

[Nuala Clayton](#)

Other Legal Areas where we can help you

Hayes Solicitors are also highly experienced in advising International Executives and Employees on the following issues:

[Banking](#)

[Commercial and Business](#)

[Family](#)

Healthcare

Litigation and Dispute Resolution

Media

Private Client

Property

LINEE Network

Hayes Solicitors are a part of the Lawyers International Network for Employers and Employees (LINEE). This network has been set up for firms internationally who have expertise in advising Executives, high net worth persons and other employees.

This factsheet is intended for general information purposes only and not as a substitute for legal advice specific to an individual's circumstances. Contact Davnet O'Driscoll to talk about your Employment issue with our expert Employment Team.

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