

A&L Goodbody  
**Legal Island Annual Conference**  


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Case Law Review 2019

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**Introduction** A&L Goodbody

<p><b>Workplace Relations Report 2018</b> <span style="float: right;"><b>1</b></span></p> <ul style="list-style-type: none"> <li>• 343% increase in age-related disability claims</li> <li>• Average waiting time of 6-9 months</li> <li>• 75% adjournment applications successful</li> </ul>	<p><b>Labour Court Annual Report 2018</b> <span style="float: right;"><b>2</b></span></p> <ul style="list-style-type: none"> <li>• 1,169 referrals – 7% increase from 2017</li> <li>• 770 employment rights appeals <ul style="list-style-type: none"> <li>• 57% unfair dismissals, employment equality, OWT</li> </ul> </li> <li>• 945 hearings scheduled</li> <li>• 504 Recommendations/Determinations/Decisions</li> </ul>
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**Themes** A&L Goodbody

<b>Reasonable Accommodation</b> <span style="float: right;"><b>1</b></span>	<b>Injunctions</b> <span style="float: right;"><b>2</b></span>	<b>Immigration</b> <span style="float: right;"><b>3</b></span>	<b>Fair Procedures</b> <span style="float: right;"><b>4</b></span>
<b>Working Time</b> <span style="float: right;"><b>5</b></span>	<b>Maternity Leave &amp; Pregnancy Discrimination</b> <span style="float: right;"><b>6</b></span>	<b>Constructive Dismissal</b> <span style="float: right;"><b>7</b></span>	<b>Annual Leave</b> <span style="float: right;"><b>8</b></span>

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# 1. Reasonable Accommodation

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## Nano Nagle v Daly

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14 October 2013  
Equality Tribunal

12 August 2014  
Labour Court

11 December 2015  
High Court

31 January 2018  
Court of Appeal

31 July 2019  
Supreme Court

Back to Labour Court

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## Supreme Court – Key Take-aways

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**REASONABLE ACCOMMODATION**  
Objectively evaluate appropriate measures to facilitate a return to work

**MEDICAL ADVICE**  
Be fully informed by up-to-date medical advice

**REDISTRIBUTION**  
Consider the redistribution of both core duties and non-core tasks

**CONSULTATION**  
Though not necessarily mandatory, a "wise" employer will engage and consult with the affected employee

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## 2. Injunctions



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### Injunctions




**01**  
**Kearney v Byrne  
Wallace**

- Court of Appeal
- Jurisdiction for redundancy-based unfair dismissal claim



**02**  
**Powers v HSE**

- High Court
- Jurisdiction for fixed-term employment claim



**03**  
**Grenet v EA Ireland**

- High Court
- Pitfalls of no-fault dismissal
- Ostensible authority

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## 3. Immigration



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### Jones v Minister for Justice and Equality

- Application for Irish citizenship via naturalisation
- High Court
- Irish Nationality and Citizenship Act 1956 – “*continuous residence*” in final year
- What a difference a single day makes!
- Court of Appeal hearing 8 October 2019

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### 4. Fair Procedures

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### Fair Procedures



#### McKelvey

- Court of Appeal
- Legal representation during disciplinary hearing?

#### Park Hotel

- Labour Court
- Probationary dismissal – fair procedures?

#### Hughes v IBTS

- High Court
- Judicial Review – lawfulness of decision-making process

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## 5. Working Time

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### European and Irish cases on Working Time Records

<p><b>CCOO v Deutsche Bank</b> 1</p> <ul style="list-style-type: none"><li>• CJEU</li><li>• WTD: "guarantee better protection of the safety &amp; health of workers" by ensuring "adequate breaks" and imposing "ceiling on duration of working week"</li><li>• Suitable system in place to record daily and weekly working time</li></ul>	<p><b>Kepak v O'Hara</b> 2</p> <ul style="list-style-type: none"><li>• Labour Court</li><li>• Failure to keep proper records – employer had "permitted" employee to work excessively</li><li>• Organisation of Working Time Act 1997</li></ul>
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## 6. Maternity Leave & Pregnancy Discrimination

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## Recent cases

01

### G4S Secure Solutions v Kelly

- Labour Court
- "effective, dissuasive, proportionate"
- Maximum compensation awarded

02

### Financial Administrator v Telecom Provider

- WRC
- "a problem that needed to be solved"
- Award of €26,100

03

### Dir of Marketing v Telecom Co.

- WRC
- AO not convinced employer "completely unaware/indifferent" to pregnancy
- Award of €55,000

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## 7. Constructive Dismissal

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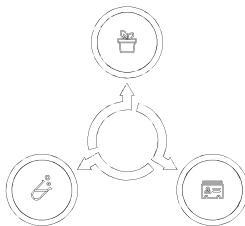
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## Recent Cases



### Ryan, Canon & Kirk Accounting v Kneite

- Labour Court
- Win for employer
- Held: "behaved reasonably and expeditiously when dealing with the Complainant's complaints"

### Local Govt Agency v Connolly

- Labour Court
- Win for employer
- Held: "no breach of contract or unreasonable behaviour"

### Accountant v Accountancy Firm

- WRC
- Loss for employer
- Award of €16,500

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8. Annual Leave



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Kreuzinger and Planck cases

- “Use it or lose it” approach to statutory annual leave entitlement
- CJEU: objective of WTD = ensure employees take leave for purpose of rest and relaxation to ensure “*effective protection of their health and safety*”
- Employer must be able to show “*specifically and transparently*” that employees were given chance to take annual leave
- Steps for employers:
  - > Annual Leave Policy
  - > Reminders
  - > Encouragement

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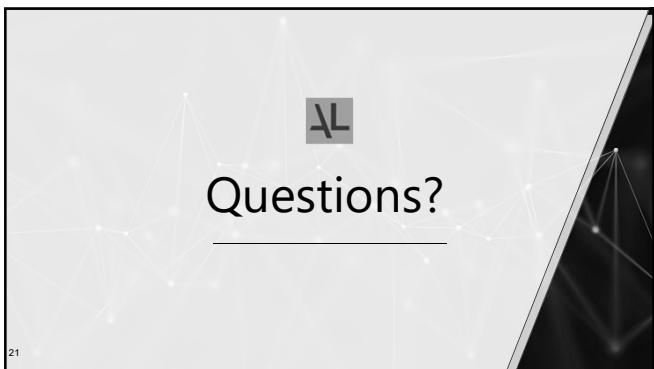
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Questions?



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