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Important Irish Employment Case Law Review 2018

Legal Island Annual Conference

Ailbhe Dennehy, Associate

Keynote speaker at the Legal Island Annual Conference, Ailbhe Dennehy, Associate, will be presenting on the latest developments in Irish employment law, including the impact of the new Employment Act 2014, the new Employment Protection (Amendment) Act 2015, and the new Employment Protection (Amendment) Act 2016.

Introduction

Courts Services Annual Report 2017
Significant decrease in employment litigation

Labour Court Annual Report 2017
1,093 referrals
780 hearings
530 recommendations/determinations /decisions/orders
Average timescale – 13 weeks

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Themes

1. Workplace Investigations and Fair Procedures
2. Workplace Bullying
3. Disability Discrimination and Reasonable Accommodation
4. Redundancy
5. Working Time
6. Additional cases and trends
 - ✓ Does TU rep advice amount to legal advice?
 - ✓ Does PILON remove risk of UD claim?
 - ✓ Recent trend – application of statutory time limits for employee claims
 - ✓ Recent trend – bar for constructive dismissal claims remains high

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1. Workplace

Investigations and Fair Procedures

Investigations and Fair Procedures

Dunboyne Castle case – Labour Court



- 1 USB key containing "highly confidential" company information
- 2 Paid suspension pending investigation outcome
- 3 Held: decision to dismiss was "within range of responses of a reasonable employer"

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Castle Durrw Case – High Court

Unfair Dismissal Claim
EAT – Circuit Court –
High Court

1

Importance of impartiality and
independence of investigation and decision-
making

2

"hardly surprising" that employee
objected to Mr Stokes conducting
investigation and disciplinary
process

3

Barton J: "I was left with the distinct
impression that, had a little common sense
and humility been brought to bear on
matters, the outcome might very well have
been different and this entire litigation
avoided"

4

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A Banker v A Bank – Adjudication Officer

Gross misconduct dismissal

1

"deliberately and repeatedly manipulated the Bank's system to apply a rate of interest to his parents' deposit account that was significantly higher than the market rate"

2

"serious flaws in the process that resulted in dismissal"

3

Appropriateness of reinstatement?

4

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Heinz-Peter Nasheuer v NUI Galway – Court of Appeal

1

Alleged bias on part of investigator

2

Test for bias is objective not subjective

3

Held: *"nothing irregular or suspicious about the procedure advised by the Labour Court...just because it did not provide for consultation with the respondents regarding the terms of reference"*

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2. Workplace Bullying

Two recent decisions to be aware of

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2. Workplace Bullying

Hurley v An Post
High Court

- Vicarious liability for workplace bullying?
- €161,000 compensation

McCarthy v ISS
Court of Appeal

- "Upwards" bullying
- Duty to ensure safe place of work

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3. Disability Discrimination and Reasonable Accommodation

Where are we now?

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3. Nano Nagle – where are we now?

• Daly v Nano Nagle

- Long running disability discrimination case
- Court of Appeal – February 2018
 - Employer's statutory duty to reasonably accommodate disabled employees *not* as onerous as previously understood
 - The obligation does *not* extend to requiring an employer to employ a person in a position if they are not able to perform the essential duties of that position
- Note appeal pending to Supreme Court

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Nano Nagle – Key Takeaways

Redistribution of non-core duties/tasks

Justify characterisation

No obligation to consult

Not required to create a new position

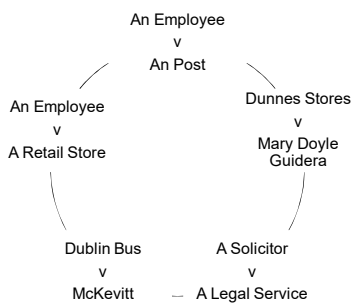
Objectively evaluate reasonable accommodation

Not obliged to retain if not competent and capable

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Recent practical cases on disability discrimination in 2018



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4. Redundancy

Redundancy is a dismissal of an employee where the employee's position has become redundant. It is a dismissal of an employee where the employee's position has become redundant. It is a dismissal of an employee where the employee's position has become redundant.

4. Cinders Ltd v Byrne – Labour Court

When is an employee not entitled to a statutory payment?

1

Section 15 of Redundancy Payments Acts

2

Held:

*“the suitability of the employment is an **objective** matter, whereas the reasonableness of the employee’s refusal depends on factors personal to him and is as **subjective** matter”*

3

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4. Internal Sales Specialist v A Respondent

Substantively fair redundancy but procedurally unfair

- “undue haste”
- “carried out in a cold systematic fashion” that “failed to deal with the human aspect”
- Award equivalent to 5 months’ pay

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5. Working Time

Working Time Regulations 1998

5. Right to Disconnect

The Kepak Case

- > Employer "permitted" employee to work excessively
- > Labour Court awarded €7,500

The Law

- > Section 15 of the OWT Act - an average of 48 hours a week
- > Section 25 of the OWT Act keep records for at least 3 years

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6. Additional Cases

Other practical cases to note in 2018

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Can PILON remove risk of UD claim?

An Employee v A Technology Company

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6. Additional Cases

Does TU Rep advice
amount to legal advice?

A Showroom Host v A Car Sales Company

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6. Additional Cases

Recent trend
– enforcing statutory time limits

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6. Additional Cases

Recent trend
– bar to constructive dismissal remains high

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