



Employment Law Bulletin

WELCOME

To the second edition of the employment law bulletin which will highlight developments in the law.

In the past number of months we have had a new addition to our employment law team. Alice Crowley has joined us from a leading Dublin Law firm.

Additionally, a new initiative on the employment team is to hold quarterly topical roundtable discussions. If you would be interested in attending these discussions please send a mail to marketing@rdj.ie or contact any of our employment law team.

EXPECTED DEVELOPMENTS IN EMPLOYMENT LEGISLATION IN 2006

A number of pieces of legislation and Codes of Practice are expected to be implemented during 2006. These will have a significant impact on employment law and all employers should keep an eye on developments during 2006 to make sure that they are fully compliant with all new employment legislation. It is timely to take a brief look at developments expected during 2006 as follows:-

- The Labour Relations Commission have finalised a Code of Good Practice relating to access to part-time work which we expect to be published shortly. The Commission is also preparing a Code of Practice in relation to communication and consultation with employees which will act as an aid for employers in respect of the Employees (Provision of Information and Consultation) Act, when it is passed into law. The Information and Consultation legislation will give effect to the provisions of an EU Directive on Information and Consultation

of employees. The minimum requirements for the right to information and consultation of employees will be established and employers will be obliged to provide information and consultation on various issues, such as the probable development of the undertaking's activities and economic situation; a structure and development of employment within the undertaking and any anticipatory measures envisaged. The legislation will apply initially to undertakings with at least 150 employees but will eventually apply to any businesses with 50 employees or more from a date to be decided following enactment of the legislation.

- We are also expecting the Employment Permits Bill, 2005, to be enacted this year. This Bill seeks to codify current procedures relating to employment permits and provides for the application, grant, renewal, refusal and revocation of employment permits. A major change in this legislation will be that, once enacted, it will allow for individuals to apply for work permits. Currently, only the prospective employer can apply. More on this below.
- The Parental Leave (Amendment) Bill, 2004, is also expected to be enacted this year. This Bill provides that an employee will be entitled to parental leave not only if they are the natural parent of a child but also an adopting parent or a person who is in loco parentis to a child. The maximum age of a child in relation to whom parental leave may be taken will be increased by three years to the day on which the child reaches the age of eight years. In relation to a child with a disability, parental leave entitlement will not expire until that child's sixteenth birthday, or the date on which the child ceases to have a disability, whichever occurs first. It is also proposed under this new legislation that parental leave can be taken over two separate periods, of not less than

six continuous weeks and not exceeding fourteen weeks in total. The Bill also provides that an employee who proposes to take parental leave will be obliged, if requested, to furnish evidence of the date of birth of the child in respect of whom the leave is sought; the fact that the employee is in fact the parent of the child and the disability of the child where relevant. Pursuant to the Bill, it is also an offence to penalise an employee who proposes to take parental leave and a person who returns to work following parental leave will be entitled to return to work under terms and conditions not less favourable than those that were previously applicable to the employee.

- A number of Regulations under Health and Safety legislation are also expected during 2006 on foot of several EU Directives that relate to employee Health and Safety. In this regard, we are expecting Regulations regarding the minimum safety and health requirements for the use of work equipment by workers and Regulations protecting workers from risks arising from physical agents/vibrations. In addition, the Health and Safety Authority is expected to enact Regulations laying down minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) and the protection of workers from the risks related to exposure to asbestos at work.

Undoubtedly, along with the above, there will also be developments in case law relating to employment issues and employers should do all they can to ensure that they stay up to date with developments during the year.

THE EMPLOYMENT PERMITS BILL, 2005

There are a number of methods by which a non-EEA National can obtain employment in Ireland. The most common method is for an employer to obtain a work permit from the Department of Enterprise, Trade and Employment. The present system provides that a work permit is applied for and issued to an employer as permission to employ a specific, named, non-EEA National, for a specific job, for a specific period of time, not exceeding one year in duration.

In June 2005 the Department of Enterprise, Trade and Employment published the Employment Permits Bill, 2005. This Bill introduces for the first time in Ireland a Green Card system to occupations where there is a skills shortage. The system will be restricted to a list of occupations in the annual salary range of between €30,000 and €60,000. The Government hopes to put this policy in place in early 2006. Examples of occupations/sectors which have been identified by the expert group advising the Government for future skill needs are:-

1. Food processing and agriculture.
2. Health care.
3. ICT.

The Bill also contains a number of new important protections for migrant workers the most important being that the Green Card or permit will now be granted to the employee rather than the employer and the employee may apply for the work permit or Green Card. The employment permit can contain a statement of the rights and entitlements of the migrant worker, including that the employee may change employment through the application for another permit by a new employer. This will provide migrant workers with greater freedom and flexibility. The Bill also prohibits employers from deducting expenses associated with recruitment from remuneration and from retaining personal documents belonging to the employee.

The Bill also introduces significant penalties for breaches of the legislation comprising of fines up to a maximum of €50,000 or terms of imprisonment not exceeding five years.

At the time of going to print, the Department of Enterprise, Trade and Employment was unable to confirm when the Bill will be enacted although previous indications had suggested early 2006.

IMPACT OF DATA PROTECTION LAW ON THE PROVISION OF REFERENCES

The Data Protection Acts, 1988 and 2003, (“the Acts”), provide an individual with the right to obtain a copy of any personal information or data kept on a computer or in a structured manual filing system, by any person or organisation, regardless of when the data was created.

A reference given by an employer about a current or previous employee is regarded as “personal information” under the provisions of the Acts.

There is little protection under the Acts for any employer who refuses to disclose to the data subject the contents of their reference.

The Acts provide that personal data containing expressions of opinion about the data subject may be given to the data subject without the permission of the person who expressed that opinion. However, this does not apply if the expression of opinion was given in confidence or on the understanding that it would be treated as confidential.

The Data Protection Commissioner, Billy Hawkes, has warned that an opinion given in confidence must satisfy a high threshold of confidentiality.

Factual information such as employment dates and absence records will be known to an individual and should be provided. Performance related information may have been discussed previously with the employee during a review or appraisal and should also be provided.

In essence, employers should be aware that references will almost always have to be disclosed to a data subject even if the heading on the reference is “confidential” because the reference contains personal information about the data subject.

maternity leave and an additional 12 weeks unpaid maternity leave.

For further information, to receive a copy of our legal updates or to discuss any aspect of employment law please contact a member of our employment law team;

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ADDITIONAL MATERNITY LEAVE ENTITLEMENTS

When announcing his budget measures in December, Brian Cowen announced additional maternity leave entitlements to employees. To give effect to these changes, the Maternity Protection Act, 1994 (Extension of Periods of Leave) Order, 2006, has now been published and came into operation on the 1st February last.

The Order makes it clear that the additional four weeks of paid and unpaid maternity leave will apply to any employee who commences maternity leave not less than four weeks after the 1st February, 2006.

Therefore, all employers need to be aware that any employees commencing maternity leave on or after the 1st March, 2006, are entitled to 22 weeks paid