A&L Goodbody

EMPLOYMENT

Workplace Relations Commission 2020 *Annual Report*

On 26 April 2021, the Workplace Relations Commission (the **WRC**) published its 2020 Annual Report (the **Report**).

The Report outlines the challenges that the WRC faced in 2020 in the delivery of its services to the public and the measures it put in place to adapt and evolve as a result of the COVID-19 pandemic.

7 MIN READ

Similar to all organisations, public and private, the WRC faced challenges during the year that were unprecedented and which, at the beginning of the year, were unimaginable … The considerable technical and practical problems associated with resolving disputes or carrying out a hearing cannot be overstated, particularly where, in most instances, no person involved is in the same room. The positive one-to-one engagement that might take place in the margins of a conciliation or a mediation, or between the parties before a hearing cannot happen as easily. And, in terms of adjudication, the requirement to ensure that hearings are carried out consistent with fair procedures is resource-heavy and time-consuming for all parties.

- Liam Kelly, Director General WRC

Despite the challenges faced by the WRC, it continued to provide services to employers and employees throughout the pandemic.

Six key takeaways for 2020

8K
complaint applications

19K
specific complaints made

7.7K
Inspections

€1.7m
recovered wages for employees

40
compliance notices served

81
total prosecutions

Conciliation, advisory and mediation services

Conciliation, advisory and mediation services provided by the WRC have traditionally relied on face-to-face interaction between the parties. COVID-19 restrictions forced the WRC to deliver these services remotely for most of 2020.

01

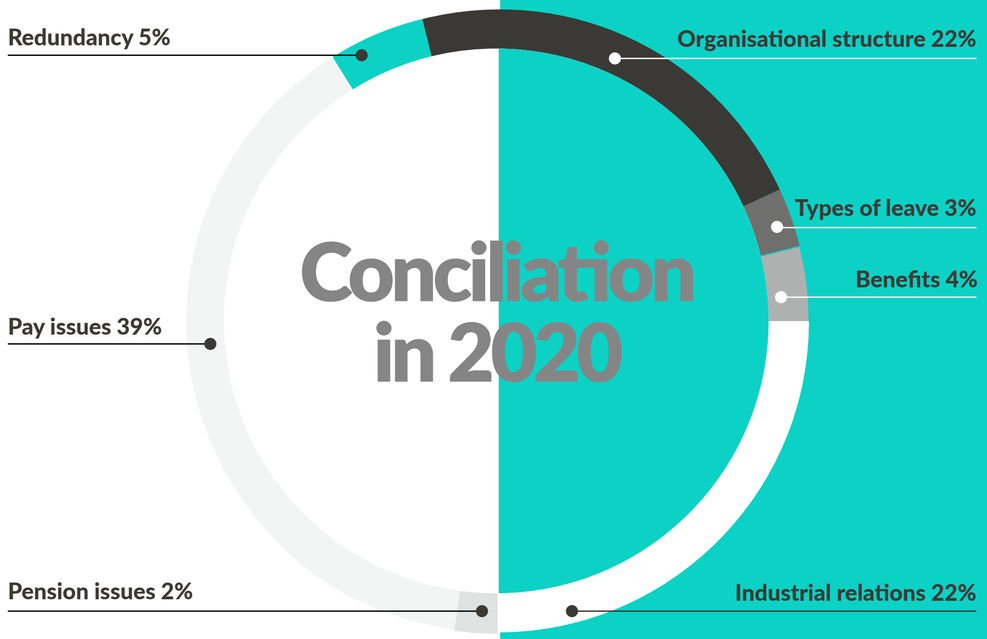
Conciliation services

According to the Report, demand for conciliation services dropped temporarily during the initial stages of the COVID-19 pandemic, but returned to normal later in the year. Pay issues, disputes relating to organisational structure and industrial relations disputes made up 86% of conciliation referrals. The remaining 14% was made up of (i) pensions issues, (ii) benefits disputes (such as bonuses, profit sharing, service pay, sick pay, staff incentives, expenses etc), (iii) disputes relating to leave, and (iv) redundancy issues.

688
requests for conciliation

735
conciliation conferences

80%
resolution rate



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Advisory services

The WRC is responsible for developing Codes of Practice, which outline how individuals and bodies should act in certain situations. In 2020, it was announced that two new Codes of Practice would be developed by the WRC.

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Code of Practice on the Prevention and Resolution of Bullying in the Workplace

The **Code of Practice on the Prevention and Resolution of Bullying in the Workplace** was finalised in 2020.

- This revised Code was a joint initiative between the WRC and the Health and Safety Authority.
- This Code came into effect on 23 December 2020.

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Code of Practice on the Right to Disconnect

A public consultation was undertaken in 2020 with a view to drafting a **Code of Practice on the Right to Disconnect**.

- This Code was finalised and came into effect on 1 April 2021

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Mediation services

The WRC provides two distinct forms of mediation: pre-adjudication mediation and workplace mediation.

Pre-adjudication mediation

Pre-adjudication mediation is generally available for any complaint referred to the adjudication service once the consent of both parties has been obtained and the Director General believes that the matter is capable of being resolved through mediation.

2120
interventions took place

1,609
complaints in total advanced to the mediation process during 2020

582
complaints progressed to full mediation

85%
of mediations were carried out by telephone

14%
of mediations were held face-to-face

1%
of mediations were held "virtually"

Workplace mediation

Workplace mediation is a confidential service provided on an ad hoc basis and best suits disputes involving individuals or small groups of workers.

58
workplace mediation requests

67
engagements with parties

Inspection and enforcement

In addition to the conciliation, advisory and mediation services provided by the WRC, it also provides inspection and enforcement services. The WRC conducts inspections to ensure employers are complying with their obligations under employment legislation. This involves examining employers' employment-related books and records, and conducting employer and employee interviews.

Inspections in numbers

7,687
Total inspections concluded

5,202
Unannounced inspections (68%)

1,760
Employers in breach

704
Inspection complaints received

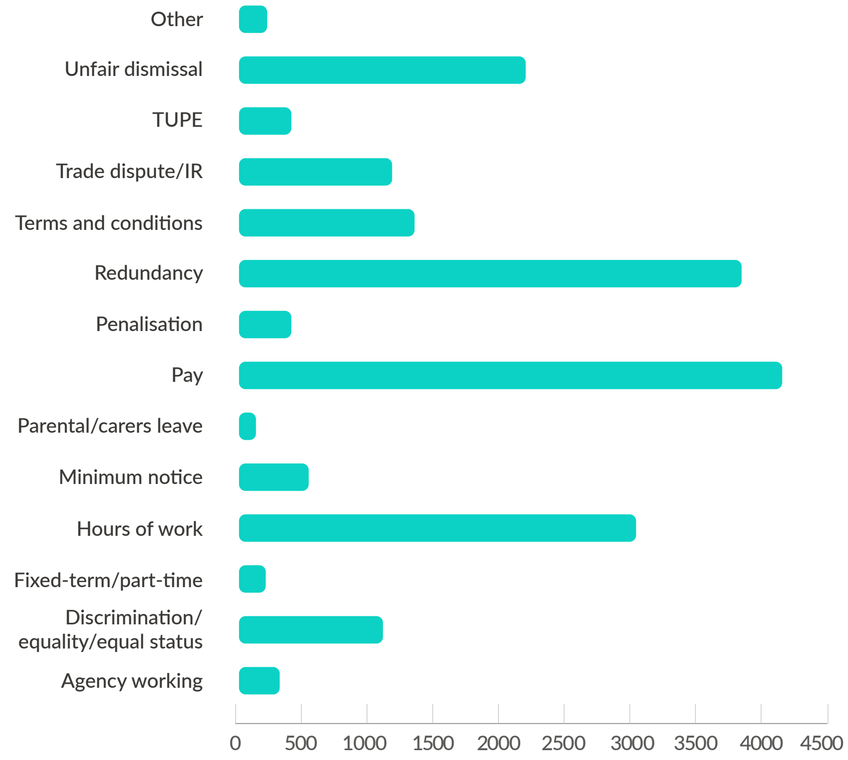
€1.66m
Unpaid wages recovered

Adjudication services

Complaint applications

Over the course of 2020, over 8000 complaint applications were made to the WRC, which involved almost 19,000 individual complaints. The number of complaints and specific complaints received decreased in 2020 by 2.5% and 9.4% respectively. In the Report, the WRC has noted that there has been a significant rise in so-called "class-actions" in 2020 i.e. complaints which involved multiple related complaints.

The most common complaints referred to the WRC for adjudication in 2020 related to (i) pay (4177 complaints), (ii) redundancy (3894 complaints), and (iii) working hours (3150 complaints).



Postponement requests /objections to virtual hearings

A revised postponement procedure was introduced in February 2020. These new procedures provide that:

- Where an application for postponement is made within five working days of the date of the notification of hearing letter, the application will be granted automatically, provided that the written consent of the other party has been obtained and provided to the post registration unit with the request
- Where an application for postponement is made outside of the five working day period, the post registration unit will advise the other party of the request and the reason for the request, and the other party will be given two days to respond.

In 2020

872

postponement requests were received

669

(77%) postponements were granted

103

objections were made to virtual hearings

58

(56%) objections were upheld

Decisions

In 2020 there was a considerable 46% decrease in the number of decisions issued by the WRC:

1,629

decisions were issued in 2020

3,029

decisions were issued in 2019

The Report notes that this decrease arose as significantly less hearings took place during 2020 compared with 2019 as a result of COVID-19 restrictions (note that no hearings took place from April to June 2020).

Notable decisions

As part of the Report, the WRC outlines a number of "notable decisions" for 2020. These decisions reiterate a number of important principles, which employers and employees should bear in mind. Key points from some of the more important decision for employers and employees are outlined below.

Decision	Key takeaways
A Facilities Coordinator v *A Bakery (ADJ-00019188)*	■ This case highlights the fact that employers must exercise all due diligence in ensuring that annual leave is taken by employees. ■ Where carried over annual leave is to lapse, this situation must be accurately conveyed to the employee and in a timely fashion.
Security Worker v *Security Company (ADJ-00029014)*	■ It was noted in this case that under Section 18 of the Organisation of Working Time Act 1997, where an employee must make themselves available for work when and as the employer requires, that their weekly hours must exceed zero. ■ In this case, a lack of formality, which was caused by a suspension of the complainant's employment meant that the employee was left on a zero hours contract. ■ Accordingly, the complainant was entitled to receive a payment, as calculated under Section 18(4) of the Organisation of Working Time Act 1997.
A Driver v *A Haulage Company (ADJ-00026100)*	■ This case noted that where an employer has work for an employee and is willing to provide the employee with that work, but the employee is unable to do the work for which he is employed, a redundancy situation does not arise.
A Door Manufacturer v A Joinery Firm (ADJ-00017045)	■ The decision in this case makes it clear that even in cases of gross-misconduct, the disciplinary process must be procedurally fair in order for the dismissal to be fair. ■ In this case the complainant was involved in a fight with another employee. ■ It was accepted that the complainant's behaviour was unacceptable in the workplace and could have resulted in very serious consequences. However, the process followed by the respondent was flawed e.g. the decision to dismiss was made by the same person who carried out the investigation and only the complainant was suspended pending the outcome of the disciplinary process. ■ As such, the procedural deficiencies in the disciplinary process jeopardised the fairness of the complainant's dismissal.

Decision	Key takeaways
A Former Sales Executive v *A Travel Company (ADJ-00027968)*	■ This dispute was brought under Section 13 of the Industrial Relations Act 1969 as the complainant did not have the requisite 12 months' service to bring a claim under the Unfair Dismissals Act 1977. ■ The complainant was initially provided with a verbal warning and was subsequently dismissed by the respondent. The respondent claimed that the complainant was dismissed because of the way he operated within the business; the respondent acknowledged that there were no issues with the complainant's performance. ■ However, the email which was sent to the complainant confirming his dismissal cited "unsatisfactory standards of performance following training" as the reason for dismissal. The complainant appealed and the respondent failed to provide any details of unsatisfactory performance. ■ It was found that there was a complete absence of fair procedures; specifically, the complainant was not furnished with disciplinary procedures, was not given any notice of the nature of the meeting during which he was dismissed (or afforded representation at same), and no reasoning was provided for upholding the dismissal on appeal. ■ It was noted that, if there had been shortcomings in the complainant's performance, he should have been informed of this and provided with the necessary supports and training. ■ It was determined that the respondent orchestrated a sham disciplinary process leading to dismissal and the decision to dismiss had been a fait accompli from the outset.
A Telecoms Senior Professional v *A Utility Company (ADJ-00027189)*	■ This case highlights that, for victimisation to occur under the Protected Disclosures Act 2014, the complainant must first and foremost demonstrate that they have made a "protected disclosure". ■ In this case it was held that the complainant had not made a protected disclosure and consequently the complaint failed.
A Training Specialist v *A Pharmaceutical Company (ADJ-00025115)*	■ This case highlights the difficulties faced by complainants to prove discrimination on the ground of disability where that disability relates to stress without presenting medical evidence which concludes that the stress occurred as a result of an abnormality or malfunction.

Decision	Key takeaways
Yvonne O'Rourke v *Minister for Defence (ADJ-00007375)*	■ This case reminds employers that periods of maternity leave and pregnancy related sick leave must not be equated with sick leave absences taken by a male colleague. ■ It was noted that any less favorable treatment based on these types of absences from the workplace is prima facie discrimination on the grounds of gender.
Fitzpatrick & Boyle v *Commissioner of An Garda Síochána and the Minister for Justice, Equality and Law Reform (DEC-E/2020/002; DEC-E/2020/003)*	■ These were two linked discrimination complaints relating to age discrimination, which brought under the Employment Equality Act. ■ It was held in this case that while the complainants established a prima facie case of discrimination on the basis that their applications were not processed on the grounds of their age. It was held that the measure in this case (the age limit) was not proportionate and therefore the respondent failed to discharge the probative burden established by the complainants.
Gordon v *Garda Commissioner & Minister for Justice & Equality (DEC-S2020-004)*	■ This case involved allegations of age based discrimination. ■ The complainant previously held the rank of Chief Superintendent within An Garda Síochána. Upon turning 60, he was forced into mandatory retirement in accordance with An Garda Síochána regulations. He claimed that this amounted to unlawful discrimination, as he had no wish to retire and believed he could still be an asset to the organisation in his position. ■ The adjudication officer found that the complainant had successfully established a prima facie case of discrimination. ■ However, the adjudication officer was satisfied that the mandatory retirement age established a legitimate aim, and the means to achieve this aim were appropriate and necessary. Therefore the presumption of discrimination had been rebutted and the complaint failed.

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Resources

WRC 2020 annual report — READ MORE

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