Employee Relations

Irish labor law is broadly shaped by the laws of the European Union. Generally, Ireland implements European legislation on a “minimum standards” basis which means Irish labor laws are more flexible than other European countries.

Employers in Ireland enjoy broad freedom of contract with limited statutory requirements relating to minimum wage, vacation entitlements, maximum working hours and rest breaks. Legislative protection is afforded to employees in the areas of dismissals and redundancies.

Employees who perform their role in Ireland are afforded the protections of the mandatory laws of Ireland, notwithstanding the choice of law which governs their employment contract.

The Workplace Relations Commission (the WRC) is the body responsible for adjudicating employment law disputes in Ireland. It is a relatively new system (created on 1 October 2015) and its objective is to provide a “world class workplace relations service which is simple to use, independent, impartial and cost effective.” It is a streamlined, simple to navigate, two-tiered system – all employment complaints are dealt with by an Adjudication Officer in the first instance, with a right of appeal to a three member Labour Court. There is no provision for awarding costs to the successful party, and accordingly parties to all employment complaints at the WRC bear their own costs.

The WRC provides a mediation service to any complaint which the WRC deems may be capable of resolution. Each party to a complaint has an absolute right to object to mediation being used. The form of mediation used depends on the nature of the complaint, the parties and the mediation officer; however, in general it is done either by a series of phone calls or a mediation hearing.

The Irish Constitution also informs Irish employment law. All employees have a constitutional right that the procedures followed in an employment matter are applied fairly and in accordance with natural justice. Additionally, every individual has a constitutional right to join a union of their choice. However, there is no obligation on employers to “recognise” trade unions and employers are not required to enter into negotiations or agreements with trade unions in relation to their employees. It is for this reason that many US corporations in Ireland do not have unionized employees.
The regulation of the employment relationship

Employment law in Ireland is regulated by a combination of Irish and European Union laws. Some of the most important of these are as follows:

| Written Contract of Employment | Not required, but generally provided. Employers are obliged to provide a written statement of relevant and important work information (such as identity of employer, working hours, salary, benefits and duties of employment). Most employers comply with this requirement by incorporating the required terms and conditions into the employee’s contract of employment. |
| Maximum Working Week | 48 hour maximum average working week, calculated over a reference period of 4 months, from which there is no derogation. |
| Vacation Entitlements | Employees accrue paid vacation based on time actually worked, subject to a statutory minimum of 4 working weeks (20 days). Employees are also entitled to a paid day off or an additional day’s pay in respect of Irish public holidays (currently 9 in total). |
| Protected Leave | Ireland has the protected leaves detailed below. While employers are not obliged to pay employees during maternity, adoptive or paternity leaves, many do pay basic salary (less the State benefit) during all or part of the basic portion of the leave, depending on the industry. 
Maternity Leave - 26 weeks basic leave, with an option to take an additional 16 weeks’ additional unpaid leave (giving a total entitlement of 42 weeks’ maternity leave). A State maternity benefit payment is payable by the Department of Social Protection during the 26 weeks basic leave. The payment is currently capped at €230 per week. 
Adoptive Leave - 24 weeks basic leave, with an option to take an additional 16 weeks’ additional unpaid leave (giving a total entitlement of 40 weeks’ adoptive leave). A State adoptive leave benefit payment is payable by the Department of Social Protection during the 24 weeks basic leave. The payment is currently capped at €230 per week. 
Paternity Leave - 2 weeks leave. A State paternity benefit payment is payable by the Department of Social Protection for the 2 weeks’ leave. This payment is currently capped at €230 per week. 
Carer’s Leave – 104 weeks unpaid leave. Available to employees with over 1 year’s service to take care of a “relevant person”. Eligibility to take the leave is strictly subject to the Department of Social Protection formally approving the employee’s application to take the leave. 
Parental Leave – 18 weeks unpaid leave. Available to employees with over 1 year’s service to take care of a child in respect of whom they are the natural or adoptive parent. In most cases, child must be under 8 years old. The leave must be taken in blocks of at least 6 weeks (unless employer consents to taking the leave in less than 6 week blocks). |
Employment Equality

Irish legislation prohibits discrimination in relation to access to employment, promotional opportunities, equal pay, working conditions, training or experience, dismissal and harassment (including sexual harassment) on any of the following grounds; sex, civil status, religion, age, race, disability, family status, sexual orientation and membership of the travelling community (the Protected Grounds).

Discrimination is defined as treating one person in a less favorable way than another person based on any of the Protected Grounds and exposes the employer to a claim under the Employment Equality legislation, irrespective of whether the individual becomes an employee. Irish law protects employees from direct discrimination, indirect discrimination, harassment and victimisation.

Transfer of Undertakings (commonly referred to as TUPE)

The Transfer Regulations (or TUPE) can be a relevant consideration for parties to a business sale, acquisition, re-organisation, re-structure, or outsourcing.

By way of high-level summary, if TUPE applies to an acquisition of a business (or part of a business), it transfers the employees of that business from one party to the other (generally from the seller to the buyer). The employees of that business transfer on their existing terms and conditions (with a limited exception in relation to pensions), with their accrued service preserved, and also with the benefit of any collective agreement which was in force immediately prior to the transfer. In addition to the above, all pre-existing liabilities also transfer with any transferring employees.

TUPE will only apply where there is transfer of a business (or a distinct part of a business), from one employer to another (as a result of a legal transfer or merger), and the transferring business will retain its identity following the transfer. By way of example, TUPE would not apply to the acquisition of a business by way of share sale, because there would be no change to the employing entity.

If TUPE applies, both parties are obliged to inform the employees affected by the transfer. Consultation obligations arise when the transferee intends to make changes to the employees’ terms and conditions post-transfer.

If TUPE applies, all dismissals connected to the transfer are deemed to be unfair. However, a transferee is permitted to reduce the workforce (as required) post the transfer, if it can demonstrate that the dismissals are for economic, technical or organisational reasons (commonly referred to as the ETO Defense).

Notice of Termination

Employees are statutorily obliged to give an employer a minimum of one week’s notice of termination, and employers are obliged to provide an employee with a minimum notice of termination depending on the employee’s length of service (ranges from 1 week to 8 weeks).

However, in practice, most employers in Ireland provide for longer notice provisions in the contract of employment. The length of notice generally depends on the employee’s role, seniority and the length of time if would take the employer to replace the individual. In addition to providing longer notice provisions in the contract, employers also often reserve the right to pay in lieu of notice, and to put the employee on garden leave in the event that notice is served by either party.

In circumstances of gross misconduct, the employee may be summarily dismissed, without notice.
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<tr>
<th><strong>Unfair Dismissal</strong></th>
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<tr>
<td>Employment at will does not exist as a concept in Ireland and employees are protected against dismissal without cause. A dismissal is unfair unless an employer can prove that it was fair. For further information, see the “Termination of Employment” overleaf.</td>
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<th><strong>Redundancy / Severance</strong></th>
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<td>Irish legislation provides specific protection for employees with at least 2 years’ service, where their position ceases to exist and they are not replaced. It mainly covers situations where there is a reduction in the number of employees in a business. However, it may also include a re-organisation or re-structuring, where the duties of employment are to be undertaken by other employees, or transferred to other teams. In cases of redundancy, it is vital that a genuine and valid redundancy situation exists, and that any selection process is fair.</td>
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<td>The specific statutory rights for employees being made redundant, and who have at least 2 years’ continuous service, are as follows:</td>
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<td>An entitlement to statutory redundancy pay, calculated on the basis of two weeks’ pay per year of service, plus one week’s bonus pay, and a week’s pay is capped at €600. Paid time off to look for alternative employment or arrange training.</td>
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<td>Depending on the industry, employers may pay enhanced severance terms, subject to the employees signing waiver agreements, however this is not mandatory.</td>
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<th><strong>Collective Redundancy</strong></th>
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<td>Where a “collective redundancy” situation arises, specific statutory consultation obligations and notifications to the Minister for Jobs and the employees are triggered for the employer.</td>
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<td>A “collective redundancy” is one that involves making a specified number of employees redundant within a 30 consecutive day period. Irish legislation sets out the thresholds in determining whether a “collective redundancy” situation arises and apply to employers with a workforce of 21 employees and over and who are making a minimum of 5 employees redundant in a 30 day period. A failure to comply with the notification and consultation requirements is very serious and could result in substantial penalties for a failure to comply with these requirements.</td>
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Consultation

As a result of our European Union membership, Ireland has implemented legislation imposing obligations on employers to consult with its employees in the situations set out below – the first two scenarios are the most common situations that require employers in Ireland to consult with their employees.

- **TUPE** – as noted previously, where TUPE applies, the transferor and transferee must inform (and in certain situations consult with) the representatives of the employees that are affected by the transfer.

- **Redundancy** – as noted previously, employers must consult with employees in all redundancy situations (both collective redundancies and individual redundancies). Employers are required to consult on the proposal to restructure the role (or make the required reductions in the workforce), prior to making a final decision in relation to the redundancy of that role. This is on the basis that employers must act in a reasonable manner and follow fair procedures in relation to any dismissal, including a redundancy.

- **European Works Councils** – multinational organisations which employ at least 1,000 employees throughout the EU, and where there are at least 150 employees in two EU member states, are required to establish European Works Councils, at the written request of at least 100 employees spread out over two countries, or alternatively where management initiates the establishment of a European Works Councils, to inform and consult on a range of management issues relating to transnational developments within the organisation.

- **Request to Consult** – enterprises employing at least 50 employees are required to put in place a process to inform and consult with its employees when it receives a written request from at least 10% of the employees in the organisation (subject to a minimum of 15 and a maximum of 100 employees).

Termination of employment

Dismissal of employees is regulated by statute and the employment contract. All employers are obliged to have in place a disciplinary procedure setting out the steps to be followed by an employer in dealing with issues of concern such as conduct and performance. The procedure must be fair and allow not only for the employer to bring issues of concern to the attention of the employee, but also for the employee to defend him or herself before any decision is made as to disciplinary action. Failure to follow fair procedures, and/or establish a fair reason for dismissal, may lead to a finding of unfair dismissal against the employer notwithstanding the giving of notice.

The primary piece of legislation governing the dismissal of staff is the Unfair Dismissals Acts 1977 – 2015 (the UD Acts). The UD Acts provide that every dismissal is deemed to be unfair unless it is based on one of the fair grounds for dismissal:

- Capability
- Conduct
- Qualification
- Redundancy of the role

- Competence of the employee
- Statutory prohibition
- Some other substantial reason justifying dismissal
The UD Acts provide that the onus is on employer to show that not only was the dismissal for a fair reason, but also that fair procedures are followed in effecting the dismissal. The extent of fair procedures to be followed will depend on the circumstances and the reason for effecting the dismissal.

The UD Acts apply only to employees who have obtained 1 years’ service – the service requirement does not apply in a limited number of circumstances, such as where the dismissal relates to trade union membership or activity, pregnancy the protected leaves, entitlements under the National Minimum Wage Act, and protected disclosures made under the Irish whistleblowing legislation (the Protected Disclosure Act 2014).

Employees may also bring a claim for discriminatory dismissal under the Employment Equality legislation where their dismissal is connected with one of the 9 Protected Grounds (listed above) but they have not obtained the requisite 1 years’ service to bring a claim under the UD Acts.

The maximum compensation available under the UD Acts (and the Employment Equality Acts for discriminatory dismissal) is (i) 2 years’ remuneration (5 years’ remuneration in the case of dismissal resulting from whistleblowing); (ii) re-engagement; or (iii) re-instatement.

As an alternative to the statutory unfair dismissal claim, an employee may also take a wrongful dismissal action in relation to a breach of contractual rights. Wrongful dismissal is an action at common law which is taken by an employee in circumstances where a contract is terminated by the employer and where damages have been assessed as either (i) the remuneration which the employee would have earned had he or she been permitted to work out the balance of the contract; or (ii) the notice period to which the employee was entitled to had the contract not been unlawfully terminated.

In Ireland there is also a risk of an employee applying to the High Court for an employment injunction, often to prohibit their employer suspending, dismissing or otherwise disciplining them on the basis that fair process and/or natural justice has not been afforded to the employee. The costs of defending such an injunction can be very high and certainly upwards of €50,000, with the potential for costs awards being made against the unsuccessful party.

Protected Disclosures Act 2014

In July 2014, the Protected Disclosures Act 2014 (the PD Act) came into force. It introduced pan-sectoral whistleblowing protection for the first time in Ireland. The PD Act applies to a wide variety of workers, including employees, contractors, agency workers, and members of the Garda Síochána (the Irish police force). The legislation promotes the disclosure of information relating to wrongdoing in the workplace by offering protection for all workers from penalisation in circumstances where they make a protected disclosure. “Relevant wrongdoings” is broadly defined by the legislation and includes the commission of an offence, a miscarriage of justice and non-compliance with a legal obligation which comes to their attention in the workplace.

Equity Incentives

Equity incentives are a well-established means of compensating employees in Ireland. Many US multinationals are able to extend their existing plans into Ireland without having to make many changes to the key terms. Market practice concerning equity incentives in Ireland is strongly influenced by international trends, particularly US and UK practice. Practice can also vary by sector e.g. banking and financial institutions have curtailed cash-based bonuses and are using more share
based arrangements with elements of deferral and forfeiture.

Options or other conditional rights to acquire shares in a company (such as restricted stock units or "RSUs") are the most common means by which senior management equity incentives are structured in Ireland. Equity in the form of shares remains an attractive proposition for companies compared to cash due to the fact that share-based compensation, where the shares are in the employer or a company controlling the employer, remains exempt from employer social security charges (PRSI). This results in a saving of 10.75%. However, tax legislation offers only limited opportunities to minimise the employee's exposure to income-based charges (income tax, universal social charge, employee PRSI) where incentives are awarded on a discretionary basis. There are some tax efficient schemes set out in legislation, but these must be available to all employees.

Given the limited scope to avail of statutory tax reliefs for executive schemes, other structures have evolved that aim to minimise tax by bringing the value delivered into the capital gains tax regime. Ireland's capital gains tax rate (currently 33%) compares favorably to the charge on income (up to 52% for employees).

**Pension, Death and Disability Benefits**

Outside of any contractual commitments, there is currently no legal obligation on an employer to establish a pension plan for employees based in Ireland. There is also no obligation to provide death or disability benefits. However, the Government has indicated its intention to legislate for auto-enrolment to private occupational pension plans (under which it is likely that an employer would have a statutory obligation to make contributions). No implementation date has yet been set and it is unclear what the contribution rate might be. Under the Irish Pensions Act 1990, where an employer does not provide an occupational pension plan or, where it provides a plan but (i) eligibility for that plan is limited; or (ii) the waiting period for entry exceeds 6 months; or (iii) the plan does not allow for payment of additional voluntary contributions by employees, the employer must provide access to a standard personal retirement savings account (PRSA). PRSAs are available from life offices, banks and investment firms. There is no obligation on an employer to pay contributions to a PRSA.

Occupational pension plans are often established voluntarily by employers and may be established on a defined benefit or defined contribution basis. Defined contribution pension plans are now more common as the benefits provided under such plans are determined by the amount of contributions paid in, investment return achieved and annuity rates at retirement. Unlike defined benefit pension plans, there is no guarantee as to a specific level of retirement benefit and so no funding liability for an employer can arise beyond the obligation to pay contributions at the prescribed rate. Occupational pension plans are nearly always established under trust in order to be capable of approval by the Irish Revenue Commissioners, conferring significant tax advantages for the sponsoring employer and the employees.

In addition, larger employers often provide employees with death in service and disability benefits. In order to provide lump sum death in service benefits in a tax efficient manner a trust structure is required and, for this reason, they are often provided as part of an occupational pension plan. Disability benefits, however, are provided through separate long term disability arrangements. In both cases, the benefits are usually insured with a life office.