

	<p style="text-align: center;">MORGAN MC MANUS SOLICITORS</p> <p style="text-align: center;"><i>With offices in Northern Ireland and the Republic of Ireland and also practising in England/Wales.</i></p> <p style="text-align: center;">ISSUE 13</p>	<p style="text-align: center;">June 2005</p>
---	--	---

Employment Law Bulletin

WELCOME to the thirteenth issue of our Employment Law Bulletin - keeping you advised of developments in Employment Law both North and South of the Border. Every employer will be aware of the necessity to be informed of ever increasing duties because of legislative developments which are being enacted by reason of EU Directives. The difficulties for the employer with businesses in both jurisdictions are doubled! This is where we can assist.

BRIAN MORGAN, SOLICITOR, REPORTS ON

1. Northern Ireland Law

Transfer of Employment (Pension Protection) Regulations (Northern Ireland) 2005 (SI Number:2005/94)

The Regulations set out the mechanics of pension protection following a TUPE transfer. From the 6th April 2005, employees who are members of an occupational pension scheme before a TUPE transfer will be entitled to have a scheme provided by the transferee employer.

Information and Consultation of Employees Regulations (Northern Ireland) 2005

These Regulations came into operation in Northern Ireland on the 6th April 2005. For further information on these Regulations, read the article by Brian Morgan on our website (articles: Employment Law) – “*The Information and Consultation Directive 2002*” published November 2004

<http://www.morganmcmanus.com/html/pdf/Information%20and%20Consultation%20Directive.pdf>

Disability Discrimination Act 2005

This Act received Royal Assent last April. The Act amends the existing Disability Discrimination Act to:

- * Introduce a new positive duty on public bodies to promote equality of opportunity for disabled people
- * Provide protection for more people diagnosed with the progressive conditions of HIV, MS and cancer

- * Remove the requirement that mental illnesses must be "clinically well recognised"
- * Ensure that all functions of public authorities (e.g. issuing licences) are covered by the DDA and not just services as now
- * Provide a power to apply the DDA duties on other service providers to the provision of transport vehicles
- * Allow an "end date", no later than 2020, by which all rail vehicles will have to comply with accessibility regulations, and apply those regulations to vehicles which are being refurbished
- * Include provisions enabling disabled people to get reasonable adjustments, other than to physical features, when dealing with landlords and managers of rented premises
- * Ensure that a landlord cannot unreasonably refuse consent where a disabled tenant wishes to make an adaptation to rented accommodation
- * Provide new rights for disabled local councillors not to be discriminated against by their local authority including rights to reasonable adjustments
- * Cover bodies that award general qualifications (e.g. GCSEs and A Levels)
- * Cover larger private members' clubs (i.e. those with 25 or more members).

New Rules of Procedure for Employment related Tribunals

New Regulations and Rules of Procedure for Industrial Tribunals and the Fair Employment Tribunal for Northern Ireland came into operation on the 3rd April last. These will have a major effect on the manner in which both employees and employers approach disputes. We will cover this subject in more detail in a subsequent issue.

Statutory Paternity Pay and Statutory Adoption Pay (General) (Amendment) Regulations (Northern Ireland) 2005

These Regulations came into force 6th April 2005. The Regulations amend the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002 to ensure that, where an employee is reinstated or re-engaged pursuant to a dispute resolution procedure, any break in the continuity of his or her employment between the dismissal and the reinstatement or re-engagement will be disregarded for the purposes of entitlement to statutory adoption or paternity pay. They will apply to reinstatements or re-engagements which take place on or after 6 April 2005. The Regulations can be viewed on the HMSO website.

LRA CODE OF PRACTICE

The Labour Relations Agency's new Code of Practice on Disciplinary and Grievance Procedures became operational from 3 April. The code is available on the LRA's web site at www.lra.org.uk

This Code of Practice provides practical guidance to employers, workers and their representatives on:

- * The statutory requirements relating to disciplinary and grievance issues;
- * What constitutes reasonable behaviour when dealing with disciplinary and grievance issues;
- * Producing and using disciplinary and grievance procedures; and
- * A worker's statutory right to bring a companion to grievance and disciplinary hearings.

A failure to follow any part of this Code does not, in itself, make a person or organisation liable to proceedings. However, tribunals will take the Code into account when considering relevant cases. Similarly, arbitrators appointed by the LRA to determine relevant cases under the LRA Arbitration Scheme will take the Code into account.

Council of Ministers fails to remove working time opt-out

The UK's right to derogate from the 48-hour maximum working week under the Working Time Directive (No.93/104) has been preserved for the foreseeable future, after the UK Government managed to stall amendment proposals debated by the Council of Ministers on 2 June 2005. Under the current proposals, the opt-out would have been removed within three years of the Directive coming into effect. However, the Secretary of State for Trade and Industry, Alan Johnson, with the backing of employment ministers from Germany, Poland, Austria and Hungary, among others, opposed the proposals currently before the Council, forcing the issue to be dropped for the time being.

Court of Appeal gives guidance on compromise agreements

The Court of Appeal has handed down an illuminating judgment in the case of *University of East London v Hinton* on the content of compromise agreements. The Court found that in order for a specific type of claim to be covered by the agreement, it must be particularly specified - a general 'catch-all' provision would not suffice.

Clause 9 of the claimant's compromise agreement stipulated that all outstanding claims arising out of the employment and/or its termination were intended to be settled and went on to list 11 particular kinds of claim, but expressly exempted certain other kinds of claim such as pensions and personal injury. The agreement did not, however, contain an express reference to a public interest disclosure claim under S.47B of the Employment Rights Act 1996. When, following settlement, the claimant complained to the tribunal of a continuing detriment under S.47B, the question arose whether he was precluded from doing so by the compromise agreement. A tribunal held that he was not, as the claim was not mentioned in the particular itemised claims listed in the agreement. The EAT overturned that decision, finding that S.47B fell within the scope of the general words of clause 9, and that the list was intended to be illustrative rather than exhaustive.

Overtaking the EAT's decision, the Court of Appeal held that the case turned on the construction of S.203 ERA, which sets out the conditions that have to be met for a compromise agreement to be valid. One of these is that the agreement must relate to 'particular proceedings'. This meant that for actual proceedings to be compromised, it is good practice for the particulars of the proceedings and of the allegations made in them to be inserted in the compromise agreement in the form of a brief factual and legal description. And in the case of particular prospective claims, it is good practice for the particulars of the nature of the allegations and of the statutory or common law basis of the alleged claim to be inserted in the agreement via a brief factual and legal description. The Court of Appeal therefore reinstated the decision of the tribunal and allowed the claim to proceed to a full merits hearing.

Employer not liable for employee's stress-induced heart attack

The Court of Appeal, in *Harding v The Pub Estate Company Ltd*, has handed down a judgment demonstrating an interesting application of the now well-settled laws on liability for stress at work to a claim for compensation for personal injury. The applicant in this case sought damages in respect of a heart attack he had suffered brought on by stress at work. His claim was upheld in the county court. The Court of Appeal has now overturned that decision, and in doing so has made it clear that the principles of law established in recent cases where employees have claimed they have suffered psychiatric injury caused by stress at work apply equally to claims where the injury suffered is physical in nature. In Lord Justice Scott Baker's words: 'It makes no difference to the issue of liability that the injury in fact suffered by the [employee] was a heart attack rather than a psychiatric breakdown.'

The applicant was employed as manager of a pub in what is described in the judgment as 'a very rough area'. He was an experienced publican, had no sick notes, and his medical history was not known to the employer. His health deteriorated over a period of 18 months, during which time he visited his general practitioner on several occasions. While he was prescribed medication to alleviate symptoms of stress brought on by work, his GP at no point predicted a heart attack. There was dispute in the county court as to whether the employer had been put on notice that if he did not take action it was reasonably foreseeable the respondent would suffer injury. The judge preferred the applicant's evidence that he had brought his condition to his employer's attention on several occasions, and upheld the claim. The Court of Appeal, overturning that decision, found flaws in the county court judge's approach to the conflicting evidence before him. The fact was that no one had actually foreseen a breakdown and nor was such a breakdown reasonably foreseeable from the employer's point of view. Accordingly, no breach of the employer's duty to safeguard the health of the employee was established.

2. Republic of Ireland Law

SI No 77 of 2005 - Redundancy Payments Act 2003 (Commencement) Order 2005

The Minister for Enterprise, Trade and Employment, Mr Micheál Martin, has signed the Redundancy Payments Act 2003 (Commencement) Order 2005. The Order brought Sections 7, 11 and 12 of the Redundancy Payments Act 2003 into force on 10 April 2005.

As a result from 10 April a comprehensive new redundancy form (known as Form RP50) which combines the existing forms RP1 (Notice of Redundancy), RP2 (Certificate of Redundancy), RP3 (Rebate claim) and RP14 (Employee's Application for a Lump Sum from the Social Insurance Fund) should be used. This new form will provide the basis for any rebate/lump sum claim.

An employee who receives notice of redundancy on or after 10 April 2005 will receive his/her notice of redundancy on Form RP50. This form will also be used to

record the receipt by the employee of the statutory redundancy amount from the employer and will be used by the employer to claim a rebate from the Social Insurance Fund. The old Forms, RP1, RP2, RP3 and RP14, should not be used where the redundancy notice is given on or after 10 April 2005.

Section 11 confirms the rates of redundancy payment in place at present as being two weeks' remuneration per year of service plus an additional week's remuneration, currently capped at €600 per week. It also provides that in calculating the total amount of reckonable service (reckonable service is service which must be included when calculating the redundancy payment), where there is not an exact number of years, the "excess" days are to be calculated and credited as a proportion of a year.

104 weeks continuous service is required to benefit under the Redundancy Payments Act. Section 12 provides that continuity of service is maintained even where there are certain "breaks" in employment, e.g. any period of absence due to sickness, lay-off, holidays, a period of absence due to adoptive leave, additional maternity leave, parental leave, force majeure, carer's leave or a strike lock-out. Currently, an absence of more than 78 weeks by reason of sickness and 26 weeks by reason of holidays or lay-off constitute a break in the continuity of employment. The new Section 12 removes these time limits and a break of any length of time for the appropriate reasons will not therefore constitute a break in the continuity of service. However, it further provides that absences due to a lay-off, absences in excess of 52 consecutive weeks due to an occupational accident or disease or absences in excess of 26 weeks due to any other illness or injury are to be deemed non-reckonable where they occur in the 3 year period prior to the date of termination of employment and therefore not taken into account in the calculation of the redundancy payment.

All of the above provisions apply as of 10 April 2005 where redundancy notice is given to the employee on or after 10 April 2005.

Minimum Wage Review May 1st 2005

The Labour Court recommendation to increase the national minimum wage to €7.65 per hour took effect on 1st May 2005. The sub-minimum rates which may be paid to certain categories of employee, for instance to persons under the age of 18, to first time job entrants or to those engaged in structured training or study also increased from this date

Labour relations commission launches new strategy

The Labour Relations Commission (LRC) has launched its 2005-07 strategy, which aims to reinvigorate employment relations. The report is entitled: "A quality shift in employment relations" and sets out what amounts to a new drive by the LRC to help parties resolve issues themselves at the earliest possible point. It seeks to encourage parties in a dispute to do more at local level before approaching third parties, such as itself.

At the launch Maurice Cashell, the LRC chair, emphasised the importance of early identification and speedy resolution of problems in the workplace and the development of stronger, innovative and flexible conflict-prevention activities. He pointed to specific initiatives contained in the report, aimed at both public and private sectors and designed to focus workers, unions and employers on long-term solutions to industrial relations issues, rather than on simply finding "quick fixes" to immediate problems. He said: "The commission will be actively engaging with the parties,

working through the issues in individual workplaces and in this way contributing to a 'quality shift' in Irish industrial relations."

To this end, the LRC will be holding a series of seminars across the country in an effort to assist small and medium-sized enterprises in getting to grips with the challenge of effective industrial relations and helping employers and workers tackle issues that cause workplace difficulties.

According to the commission, this is "part of a new drive to improve understanding and knowledge in the workplace".

This Bulletin is intended as a general guide only. Care and attention has been taken to ensure the accuracy of the information in this Bulletin however, we advise that specific professional advice should be taken. Employment legislation is subject to change.