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Monthly Employment Law Bulletin

WELCOME to the March 2005 issue of our Monthly 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.

The current Employment Law Bulletin is presented in a different format. Articles may be accessed on our website www.morganmcmanus.com and you can hyperlink into the articles.

Northern Ireland	Republic of Ireland
<p><u>Darina Blake, Solicitor, advises on :</u></p>  <ul style="list-style-type: none"> € Proposed Changes to Family-Friendly Working; € Deadline for implementation of minimum three step procedures; € What to do if sickness occurs during holiday period; and € Recent case law. <p><u>Consultation Document On Family-Friendly Working Proposals Published</u></p> <p>This consultation document deals primarily with changes to maternity leave, parental leave and the work life balance extending the right to request flexible working to carers.</p> <p>The current proposals include extending maternity and adoption pay from 6 months to 9 months to take effect in April 2007, with a view to extending the period of ordinary maternity leave to twelve</p>	<p><u>Brian Morgan, Solicitor, advises on:</u></p>  <ul style="list-style-type: none"> € Redundancy lump sums; € Parental leave; € Equality Tribunal awards; and € Right to Bargain legislation. <p><u>New Regulations for Redundancy Lump Sum and Employers Insolvency Entitlement Calculations - Jan '05</u></p> <p>Two Statutory Instruments came into force on January 1st 2005 which should be noted by employers in redundancy or insolvency situations.</p> <p>The Redundancy Payments (Lump Sum) Regulations, 2004 (S.I. 695 of 2004) raise the ceiling on annual reckonable earnings to be taken into account in the calculation of statutory redundancy lump sum payments from €26,411 (€507.90 per week) to €31,200 (€600 per week) from 1st January 2005. Eligible employees who</p>

months within the next 3 years. There is also a proposal to introduce legislation to permit mothers to transfer a portion of their paid paternity leave to their child's father. It has also been proposed to extend a mother's notice period when preparing to return to work and to improve communications between employers and employees during maternity leave. The closing date for the consultation responses is 25 May 2005.

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Deadline for Implementation of New Statutory Disciplinary and Grievance Procedures

3 April 2005 is the date on which the legislation relating to new statutory disciplinary and grievance procedures comes into force. The responsibility lies with employers to ensure that their policies meet the minimum three-step procedure outlined in the legislation. They are also under an obligation to inform staff of all new rights and responsibilities in this regard. This matter was more fully discussed in January's issue of the employment law Bulletin, which can be accessed directly on our website.

Employers must review their existing policies and in the event that their current dispute procedures do not meet the new standards they must be changed immediately. In the event that an employer has no existing dispute resolution procedure in place, one must be implemented as soon as possible.

Employees must be informed of their new rights and responsibilities under the new legislation. Furthermore, the employer is under an obligation to provide full information in relation to the new procedures if and when requested. Employer's literature must be updated at this time. In the event that the three-step process is not followed by employers, a financial penalty will apply.

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How to deal effectively with sickness occurring during a holiday period

A question commonly asked of legal advisors is how the issue of sickness during holiday leave should be treated. Surprisingly, there is no law governing this issue and it is therefore up to employers to decide how best to approach this

are notified of proposed redundancy on or after January 1st are entitled to benefit from this amendment.

The Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations 2004 (S.I. 696 of 2004) raise the ceiling of an employee's weekly remuneration which may be taken into account for the purposes of calculating outstanding entitlements under the 1984 Act. The ceiling has been increased from €507.90 to €600 per week. This change applies to all entitlements payable under the Act where the date of termination of employment or the date of insolvency in on or after 1st January 2005.

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Review of the Parental Leave (Amendment) Bill, 2004 - Jan '05

During December the **Parental Leave (Amendment) Bill, 2004** was published. The following are the relevant amendments. The intention is to enact this proposed legislation within the first six months of 2005.

Eligibility to Parental Leave

The Bill proposes to remove the requirement for an employee to be the natural parent or adoptive parent of the child for which they propose to take parental leave. The Bill extends the entitlements to an adopting parent or a person who is person acting in *loco parentis* to a child.

Maximum Age of the Child

The Bill proposes that the maximum age of the child in relation to whom parental leave may be taken be increased from the day the child turns 5 to the day on which the child attains the age of 8. In the case of a child subject to an adoption order who is aged over 3 and under 8, the current arrangement that the relevant parent will have an entitlement to take parental leave for two years following that date will continue to apply.

In the case of a child with a disability, the relevant parent's entitlement to parental leave will not expire until that child's 16th birthday, or on the date that that child ceases to have a disability, whichever occurs first. The Bill defines disability, for the purposes of this section, as an enduring physical, sensory, mental health or intellectual impairment of the child such that the level of care required for the child is substantially more than the level of care that is generally required for children of the same age who do not have such an impairment.

matter.

I would advise that an employer should have a policy in place to clarify whether or not the employee will be entitled to be transferred to sick leave, if such an event were to arise. Employers should also make the production of medical certificates an essential requirement for the policy to apply. Having a policy in place will ensure that all employees are treated in a similar manner. It is also up to an employer to decide whether any replacement holiday will be granted of the same duration as the holiday lost or simply a proportion of that time.

It is essential that in any policy it is clearly stated how any replacement holiday dates will be arranged. Employers should also be aware that statutory annual leave cannot be brought out of carried forward to another holiday year, by virtue of the Working Time Regulations.

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€ **RECENT CASE LAW**

1. Jonathan Montague v Templeton Robinson

This FET case was heard by the Fair Employment Tribunal in Belfast last year and involved the prominent firm of Belfast Estate Agents, Templeton Robinson.

Mr Montague, the employee, alleged that he had been unlawfully discriminated against by his employer, on the grounds that he was a Roman Catholic, in its treatment of him. By virtue of this, he claimed that his employer had fundamentally breached the implied terms of trust and confidence in his contract of employment. He resigned from his position in February 2002 and cited Constructive and Unfair Dismissal by his employer.

Out of a total of 22 employees based at the employer's two branches at Belfast and Hollywood, Mr Montague was the only Roman Catholic employed. He alleged that in October 2001 one of the three partners discovered that he was a Roman Catholic and from that date treated him less favourably, to such an extent that he found it intolerable to continue in his job.

Although Mr Montague was unsuccessful in his

Manner in Which Parental Leave may be Taken

As per the current arrangements, or, alternatively, over two separate periods each consisting of not less than six weeks and not exceeding 14 weeks in total.

Evidence of Entitlement to be Furnished to the Employer

The Bill proposes that, at the employer's request, an employee who has given notice of his/her intention to avail of parental leave may be required to furnish evidence in relation to;

- the date of birth of the child in respect of whom leave is sought,
- the employee being a relevant parent of the child, and
- the disability of the child, where relevant

Postponement of Parental Leave

The Bill proposes to allow changes to the confirmation document in two circumstances which are covered by variation of the form of leave by agreement and where the employee becomes sick.

Return to Work

The provisions for returning to work following parental leave have been enhanced in line with the requirements under other legislation. The Bill aims to ensure that an individual returning to work would be entitled to return to work under terms and conditions not less favourable than those that were previously applicable to the employee and that incorporate any improvements to terms or conditions to which that employee would have been entitled if he/she had not been absent on parental leave. Continuity of service must also be preserved.

Protection of Employees from Penalisation

Under the Bill it will be an offence to penalise an employee who propose to take leave or exercise his/her rights under the legislation.

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Equality Tribunal Awards

The Equality Tribunal has released Tribunal figures detailing cases and awards made for the year 2004.

With respect to awards, the Tribunal awarded a total of €39,559 in 2004, the highest figure to date. This figure is nearly two and a half times the amount awarded in 2003 (€145,000). This increase partly reflects an increase in the number of cases decided and partly the fact that one person in 2004 received the Tribunal's highest single award to date of €127,362.

claim for religious discrimination against his employer, the Tribunal made several remarks relating to his employer's conduct, concerning its obligations under Equal Opportunities legislation. It stated that:

“unless and until the Respondent takes very urgent steps to face up to the duties under the employment protection and anti-discrimination legislation, they should not be surprised if employees feel, rightly or wrongly, that they are at risk. We believe that the Respondent should take advice now from the Equal Commission and Labour Relation Agency on these matters”.

Employers take note that the Industrial Tribunal and the Fair Employment Tribunal will not be lenient with employers who do not abide by, or fail to fulfil, their obligations under current employment legislation. Quite often the public humiliation of such reprimands by a Tribunal, can be as damaging to an employer's reputation as losing a case.

2. Farrell Mathews & Weir v Hansen

This 2005 Employment Appeals Tribunal (EAT) case involved a firm of English Solicitors which had failed to pay a bonus to one of its solicitors, after the bonus had been declared to that employee,

The EAT ruled that such a bonus, although not contractual, did constitute wages under the Employment Rights Act 1996. The EAT found that the firm's action in not paying the bonus amounted to a fundamental breach of the implied term of trust and confidence, entitling the employee to resign from her employment.

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Employers would be well advised to ensure that they update their equality policies as this would appear to be an increasingly expensive area of law!

Key Ruling in “Right to Bargain” legislation

The Labour Court has delivered a key ruling in a case brought by the SIPTU trade union against the non-union multinational, GE Healthcare.

The case was brought under the Industrial Relations (Amendment) Act 2001: the so-called "right to bargain" legislation. This Act, as amended in 2004, does not provide for union recognition in the sense of collective bargaining rights, but provides a measure of protection to employees in companies where collective bargaining arrangements are not in place and where, as a consequence, terms and conditions of employment are out of line with what would be deemed to be acceptable. However, the Labour Court found that the terms and conditions of employment at GE, when viewed overall, were not out of line with acceptable standards. Between 2000 and 2004, pay increased by an average of 37.8%, compared with the 20% provided by the national pay agreements.

The outcome of the case is that the new legislation will not have implications for non-union firms - whether national or multinational – provided that their terms and conditions of employment are comparable with those in their particular sector.

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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.