

	<p><b>MORGAN MC MANUS SOLICITORS</b></p> <p>Practising Northern Ireland and Republic of Ireland</p> <p><b>ISSUE 8</b></p>	<p><b>Oct/Nov 2004</b></p>
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## *Monthly Employment Law Bulletin*

**WELCOME** to the October/November 2004 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](http://www.morganmcmanus.com) and you can hyperlink into the articles.

<b>Northern Ireland</b>	<b>Republic of Ireland</b>
<p><b>A Look To Long Bridge For Employers and Employees– Tribunal Reform</b></p> <div style="display: flex; align-items: flex-start;">  <div style="flex: 1;"> <p><b>Donna Reilly</b> advises on changes to the Rules of Procedure of the Industrial Tribunal and Fair Employment Tribunal.</p> <p>Significant changes to the Rules of Procedure of the Industrial Tribunal and Fair Employment Tribunal were introduced in April 2004 by the Industrial Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004 (SR No.65). Industrial tribunals in Northern Ireland, such as Long Bridge, in recent years have been plagued by problems such as the backlog of discrimination cases, last minute settlements on the door of the tribunal and procedural wrangling. Tribunal Reform is currently being conducted in phases - Phase 1 was introduced in April 2004; Phase 2 discussions closed on 20<sup>th</sup> October 2004. The changes in Phase</p> </div> </div>	<p><b>The Information and Consultation Directive 2002 The Effect of the Directive on existing Industrial Relations Law</b></p> <div style="display: flex; align-items: flex-start;">  <div style="flex: 1;"> <p><b>Brian Morgan</b> Solicitor advises that employers should not wait too long to consider the impact of legislation to be enacted under the Directive</p> <p>Both Ireland and the UK (including Northern Ireland) are bound by the Directive 2002/14/EC of the European Parliament and the Council of 11<sup>th</sup> March 2002 establishing a general framework for informing and consulting employees in the European Community. They will be obliged to implement the Directive by the beginning of March 2005.</p> <p>Speaking at a seminar in Dublin 2004, Anthony Kerr, lecturer in the Faculty of Law at UCD in Dublin opined that “the implementation of the Directive could be most significant piece of employment legislation ever to be introduced in this jurisdiction.” It will give many employees the right to be informed and consulted systematically through their representatives, in matters</p> </div> </div>

I were introduced in order to prevent spurious cases, ease the backlog of current caseload, reduce costs to the public purse and handle cases from the outset effectively. Changes can be grouped under headings:

**Regulations which reduce the number of unmeritorious cases:-**

1. Power for the tribunal to strike out weak cases.
2. Rise in ceiling on costs from £500 to £10,000.
3. Increase in pre-hearing review deposit from £150 to £500
4. Requirement for a tribunal in certain circumstances to consider the award of costs against a party.
5. Power for a tribunal to award costs against parties when their conduct warrants it.

**Case Management:-**

Strict time limits are imposed on parties in order to speed up the process of preparing the cases for Hearing. Case management conferences agenda has been introduced to:

1. identify the precise issues that will be before the tribunal
2. consider use of witness exchange and their exchange
3. agree dates for hearing
4. explore potential settlement

There is also a provision for tribunals to give practical directions as appropriate and the introduction of penalties such as costs or striking out where parties have failed to comply with directions of the tribunal.

**Overriding Objective:-**

The 2004 Regulations introduce a new 'Overriding objective' and requires tribunals to 'deal with cases justly.' This includes ensuring cases are processed fairly, justly and expeditiously. The new regulations also impose a duty on the parties to assist in terms of furthering the overriding objective.

**National Security:-**

There are new provisions permitting Crown

affecting their jobs and their future employment prospects. This will have a major impact, even in organised workplaces, because the introduction of these information and consultation rights could enable the trade unions to address work/life and organisation issues that traditionally have been beyond their reach.  
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To read the full article go onto our website at <http://www.morganmcmanus.com/html/pdf/Information%20and%20Consultation%20Directive.pdf>

**Stress in the Workplace**

**– Irish High Court endorses UK Decisions**

**Brian Morgan Solicitor advises that the jurisprudence in the UK on occupational stress has been formally adopted as a result of the recent High Court Decision of “McGrath v Trintechologies Limited”**

In a previous article “Stress in the workplace - Employers should be alert to the Claims which can arise.” I advised that employers had a duty to their employees to take reasonable care for their safety at work and that this included a duty to take reasonable care for their safety from mental, psychological or psychiatric injuries that emanate from workplace stress, harassment and bullying. I referred to the House of Lords Decision in the case of **Barber v Somerset County Council [2004]** where the House of Lords overturned the Court of Appeal dismissal of Mr. Barber’s appeal. The Court of Appeal had ruled that a teacher in the school who had developed symptoms of depression and had returned to work after illness only after three weeks had not brought to the attention of the School Authorities that his illness was continuing. The Court of Appeal ruled in the circumstances that the School Authorities could not have been expected to realise that Mr Barber was still in difficulty. For this reason, his illness was “not reasonably foreseeable” and his employer was not in breach of its duty of care towards him when it failed to take steps to prevent him developing further illness. The House of Lords disagreed and by 4:1 majority allowed Mr Barber’s appeal. According to the House of Lords the mental breakdown that Mr Barber had suffered had been brought about by the pressure and stresses of his workload and the employer was in breach of its duty to protect his health and safety. The school ought to have taken proactive steps to reduce Mr. Barber’s work related anxieties by, for example, making sympathetic enquiries

employees (including members of the security agencies) to bring claims to tribunals like other employees.

### **The Future – Phase 2:-**

Consultation closed on 20<sup>th</sup> October and these reforms are planned to introduce a system, which is more user-friendly, efficient and which encourages workplace resolution. It has been planned to introduce final rules in Northern Ireland on 3<sup>rd</sup> April 2005. These will include:

1. A new pre-acceptance procedure under which claims, which do not contain prescribed minimum information will not be treated as having been lodged at the tribunal; there will be an obligation to use the forms prescribed by the Department.
2. The introduction of a period where parties can utilize the conciliation service provided by the Labour Relations Agency.
3. Clarification of tribunals' power to strike out originating applications at the pre-hearing stage.
4. Default judgements without hearings in uncontested cases.
5. There will be power for the President to issue practice directions to the Chairmen as to how procedures should be applied.
6. Ability to award costs against a representative and costs for preparation time.

Important to note that the Tribunal President recently advised Tribunal Users (Letter, 28 July 2004 to Tribunal Users), *'I do not so much expect extra work from users but the same work at an earlier stage'*. All employers and employees should take note.

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and reducing his workload.

I pointed to the fact that employers would now need to be more alert to signs of mental illness and to keep up-to-date with the latest advice on handling workplace stress to be able to discharge a duty of care. I outlined that in the Irish case of **Curran v Cadbury (Ireland) Limited** McMahon J, with regard to another UK case, **Walker v Norththumberland County Council** said *"There is no reason to suspect that our courts would not follow this line of authority if it came before the courts in this jurisdiction"*. I wondered whether this dictum would also now apply to the adoption of the reasoning of the House of Lords in the **Barber** decision. ....

In the case of **McGrath v Trintechologies Limited** Laffoy J. set out a detailed analysis of the relevant legal principles relying significantly on the decision in **Hatton v Sutherland** and **Walker**, stating:

*"The effect of the decisions of the Court of Appeal and the House of Lords in the Hatton/Barber cases is to assimilate the principles governing an employer's liability at common law for physical injury and for psychiatric injury where an employee claims that the psychiatric injury has resulted from stress and pressures of his/her working conditions and workload. In my view, there is no reason or principle why a similar approach should not be adopted in this jurisdiction. ...."*

**To read the full article go onto our website at <http://www.morganmcmanus.com/html/pdf/Stress%20in%20the%20Workplace%20-%202017%20November.pdf>**

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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.**