

	<p>MORGAN MC MANUS SOLICITORS</p> <p>Practising Northern Ireland and Republic of Ireland</p> <p>ISSUE 9</p>	<p>Dec 2004</p>
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Monthly Employment Law Bulletin

WELCOME to the December 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 and you can hyperlink into the articles.

We thought that it was appropriate for the December issue to do an Annual Review of Employment Law North and South.....

Northern Ireland	Republic of Ireland
<p>NORTHERN IRELAND</p> <div style="display: flex; align-items: center;">  <div> <p>New Compensation Limits For Unfair Dismissal And Redundancy Payments:</p> </div> </div> <p>Under the Employment Rights (Increase of Limits) Order Northern Ireland 2004 (SR 2004 No.64) certain limits on awards that can be made by the Industrial Tribunal have been raised. The cap on a week's pay, for the purposes of calculating statutory redundancy payments and the basic award for unfair dismissal, has risen from £260 to £270. The maximum compensatory award has arisen from £53,500 to £55,000. For more details, the Order</p>	<p>REPUBLIC OF IRELAND</p> <div style="display: flex; align-items: center;">  <div> <p>Health and Safety Law: Safety, Health and Welfare at Work Bill 2004</p> </div> </div> <p>Under the Safety, Health and Welfare at Work Bill 2004, the entire Health and Safety regime in the country will be revamped. There are new provisions for information and training, which must be given to employees.</p> <p>Such information will include the provision to the employees of Risk Assessments upon which the Safety Statement of the company has been issued. Another new duty imposed under Section 8 is a supervisory duty on</p>

can be found at

<http://www.northernirelandlegislation.hmsso.gov.uk/sr/sr2004/20040064.htm>

Minimum Wage:

The rates for the National Minimum Wage rose from 1 October 2004 following the recommendations of the Low Pay Commission. For workers aged 22 and over the new rate is £4.85, up from £4.50. The development rate, which applies to workers aged 18-21 inclusive, is now £4.10, formerly £3.80.

Asylum and Emigration:

On 1st May 2004 changes to section 8 of the Asylum and Immigration Act 1996 came into force. These changes relate to the type of documents which employers will be required to check and copy in order to avail of the statutory defence against a prosecution for employing an illegal worker. The documents include Category 1 documents such as a UK, or EEA Passport endorsed by the Home Office with an indefinite right to stay in the UK and Category 2 documents which may be documents such as a P45 or a work permit. It should be noted, however, that Category 2 documents must be accompanied by a passport, or other documentation confirming immigration status or a right to enter UK and stay in work.

Tribunal Reform:

Phase 1 of the changes to the rules of Procedure of the Industrial and the Fair Employment Tribunal were introduced in April 2004 by the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004 (SR No. 65). The changes included introducing powers to strike out weak cases and a new system of case management. Please refer to an article by Donna Reilly in the November edition of our Employment Law Bulletin.

Disability Discrimination:

A number of measures on disability became operational in Northern Ireland on 1st October 2004. Many changes were embodied in the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004 (SR No.55).

the employer, which involves the ongoing monitoring of the workplace and if necessary, disciplining of individual employees. The Bill also includes an express duty that employees are not to be under the influence of an intoxicant whilst at work. There is also a new requirement that an employee must submit to appropriate and proportionate tests by a competent person as may be prescribed. This will more likely include tests to be performed by a Medical Practitioner. Previously, the consent of the employee would have been required before such a medical examination could have taken place. There is also provision that a Safety Officer must be a 'competent person'; that is, he must have experience appropriate to the nature of the work to be undertaken. Risk assessments must be reviewed at least annually. A safety representative (who is appointed by the employees) will have the right to inspect the entirety of the premises either immediately after an accident or at any other time on giving reasonable notice to the employer.

Industrial Relations Acts

The Industrial Relations (Miscellaneous Provisions Act) 2004 shortens greatly the time needed from the issuing of voluntary proceeding to the Labour Relations Commission up to the issue of a binding labour court determination.

The Information and Consultation Directive

While the government has not yet produced a draft Bill the Directive, once transposed into Irish Law, will require employers of a certain size to inform and consult with the employees in respect of major business decisions. Please refer to an Article on this Directive by Brian Morgan in the November issue of our Employment Law Bulletin

Redundancy Payments Act 2003

While this Act has been law for quite some time, certain sections have not yet been implemented. Employers should however note that from the 1st January 2005 the weekly wage ceiling for the purpose of calculating redundancy payments will be increased to €600.00 from the current €507.90.

Furthermore anyone providing services to the public, whether for free or for payment, may now be required to make changes to the physical features of their premises to ensure that disabled people can access those services. Principal changes include inter alia that a new definition of direct discrimination “on grounds of a person’s disability” is added to the existing three types of discrimination (unjustified less favourable treatment for a reason related to disability; unjustified failure to make reasonable adjustments; victimisation). Changes have been made to the burden of proof and the scope of the duty on the employer to make reasonable adjustments has been widened to ‘any provision, criterion or practice applied by the employer.’ Please refer to an article by Darina Blake in the September Edition of our Employment Law Bulletin.

Sexual Orientation Discrimination:

The Employment (Sexual Orientation) Regulations (Northern Ireland) 2003 came into force in December 2003. It implements the sexual orientation aspects of the EU Equality Treatment in Employment Framework Directive (EC0000/78) which established a framework for eliminating employment discrimination based on religion, belief, disability, age and sexual orientation. Please refer to an article by Darina Blake in the April Edition of our Employment Law Bulletin.

The Gender Recognition Act 2004 received Royal Assent on 1 July 2004. Its purpose is to provide transsexual people with legal recognition of their acquired gender, subject to some specified exceptions.

Equal Pay (Amendment) Regulations (Northern Ireland) 2004:

The Regulations which came into force on 28th April 2004 amended the time period within which a person can institute proceedings under the Equal Pay Act (Northern Ireland) 1970. Where there is a “stable employment relationship” between a woman and her employer, the time limit for bringing a claim is to be six months from the date on which the employment ended. The period in which back pay may be awarded is to be increased from two to six years, in line with the period applicable for breach of contract actions. The

Maternity Protection Act 2004

This introduced, among other things, new arrangements regarding prenatal classes and arrangements for breast-feeding mothers. This Act was covered by Brian Morgan in the September Edition of our Employment Law Bulletin.

The Equality Act 2004

The Equality Act 2004 came into force on 19th July 2004. This Act makes significant changes to both the Employment Equality Act 1998 and Equal Status Act 2000. We intend to do a separate article on this in one of the future editions of the Employment Law Bulletin in early 2005.

By Brian Morgan, B.C.L., Morgan Mc Manus Solicitors email: bmorgan@morganmcmanus.ie

Equal Pay (Questions and Replies) Order (Northern Ireland) 2004 (SR No.322) came into force on 25th August 2004 and sets out a prescribed form through which an employee may question the employer concerning matters which the employee considers may breach the equal pay legislation.

Some Significant Caselaw:

In the eagerly awaited decision of *Dunnachie v Kingston upon Hull City Council* [2004] UKHL 36 the House of Lords has confirmed that compensation for non-financial losses such as injury to feelings cannot be awarded as part of the compensatory award in unfair dismissal cases. Compensation for unfair dismissal is recoverable only in respect of financial loss.

By Donna Reilly, LLB, MSc, Morgan Mc Manus Solicitors, email info@morganmcmanus.co.uk

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.