THE EMPLOYMENT LAW REVIEW

Twelfth Edition

Editor
Erika C Collins

THE LAWREVIEWS

THE EMPLOYMENT LAW REVIEW

Twelfth Edition

Reproduced with permission from Law Business Research Ltd
This article was first published in February 2021
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Erika C Collins

THE LAWREVIEWS

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADERS
Jack Bagnall, Joel Woods

BUSINESS DEVELOPMENT MANAGERS
Katie Hodgetts, Rebecca Mogridge

BUSINESS DEVELOPMENT EXECUTIVE
Olivia Budd

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Gavin Jordan

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Caroline Fewkes

SUBEDITOR
Carole McMurray

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-83862-773-7

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ADVOKATFIRMAET SCHJØDT AS

ALRUD LAW FIRM

ARIAS, FÁBREGA & FÁBREGA

BUSE

CANTERBURY LAW LIMITED

CASTEGNARO – IUS LABORIS LUXEMBOURG

CHADHA & CO

CLEMENS

DAI-ICHI FUYO LAW OFFICE

DELOITTE | TAJ SOCIÉTÉ D'AVOCATS

DELOITTE LEGAL SRO, ADVOKÁTNÍ KANCELÁŘ

DELOITTE LLP

DENTONS, CARACAS VENEZUELA

DENTONS & CO

DENTONS KENSINGTON SWAN

DFDL

ENSAFRICA

EPSTEIN BECKER & GREEN, PC

FERRAIUOLI LLC

GIANNI, ORIGONI, GRIPPO, CAPPELLI & PARTNERS

GONZALEZ CALVILLO, SC

HERNANDEZ CONTRERAS & HERRERA

HERZOG FOX & NEEMAN

MATHESON

MATTOS FILHO, VEIGA FILHO, MARREY JR E QUIROGA ADVOGADOS

PERCHSTONE & GRAEYS

PÉREZ ALATI, GRONDONA, BENITES & ARNTSEN

PETRA SMOLNIKAR LAW

PORZIO RÍOS GARCÍA

PROSKAUER ROSE

RAHMAT LIM & PARTNERS

RODRIGO, ELÍAS & MEDRANO ABOGADOS

RUTGERS & POSCH

SAYENKO KHARENKO

SCHÖNHERR RECHTSANWÄLTE GMBH

SOŁTYSIŃSKI KAWECKI & SZLĘZAK

TSMP LAW CORPORATION

VAN OLMEN & WYNANT

VIEIRA DE ALMEIDA

VILLARAZA & ANGANGCO

WALDER WYSS LTD

ZHONG LUN LAW FIRM

CONTENTS

Chapter 22

IRELAND

Bryan Dunne and Colin Gannon[1]

I INTRODUCTION

Employment in Ireland is regulated by an extensive statutory framework, much of which has its origins in European Union law. The Irish Constitution, the law of equity and common law remain relevant, particularly in relation to applications for injunctions to restrain dismissals and actions for breach of contract. The main employment-related legislation includes:

a the Industrial Relations Acts 1946–2015;
b the Redundancy Payments Acts 1967–2014;
c the Protection of Employment Act 1977–2014;
d the Minimum Notice and Terms of Employment Acts 1973–2005;
e the Unfair Dismissals Acts (UDA) 1977–2015;
f the Data Protection Act (DPA) 1988–2018;
g the Payment of Wages Act 1991;
h the Maternity Protection Acts 1994 and 2004;
i the Terms of Employment (Information) Acts 1994 and 2014;
j the Adoptive Leave Acts 1995–2005;
k the Organisation of Working Time Act 1997 (OWTA);
l the Employment Equality Acts 1998–2015;
m the Parental Leave Acts 1998–2019;
n the National Minimum Wage Act 2000–2015;
o the Carer's Leave Act 2001 (as amended);
p the Protection of Employees (Part-Time Work) Act 2001;
q the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003;
r the Protection of Employees (Fixed-Term Work) Act 2003;
s the Employment Permits Acts 2003–2014;
t the Safety, Health and Welfare at Work Act 2005–2014;
u the Employees (Provision of Information and Consultation) Act 2006;
v the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007;
w the Safety, Health and Welfare at Work (General Application) Regulations 2007;
x the Protection of Employees (Temporary Agency Work) Act 2012;
y the Protected Disclosures Act 2014 (PDA);
z the Workplace Relations Act 2015 (WRA);

1 Bryan Dunne is a partner and Colin Gannon is an associate solicitor at Matheson.

aa the Paternity Leave and Benefit Act 2016;
ab the Employment (Miscellaneous Provisions) Act 2018; and
ac the Parent's Leave and Benefit Act 2019.

Employment rights under Irish law can be enforced under the specially allocated statutory forum (the Workplace Relations Commission (WRC)) or by the civil courts in appropriate cases. The process of determining which body or court will have jurisdiction in a particular case mainly depends on whether the claim is being brought under statute or common law.

In general, employers' liability (i.e., personal injury) claims and breach of contract claims are dealt with in the civil courts, as are applications for injunctive relief in relation to employment matters, whereas statutory claims (those made, for example, under the UDA or the OWTA) are heard by the WRC or the Labour Court (on appeal).

i Civil courts

The civil judicial system in Ireland is tiered, based on the monetary value of particular claims. At the lowest level, the District Court deals with claims not exceeding €15,000; it rarely hears employment-related disputes. At the next level is the Circuit Court, where jurisdiction is generally limited to awards of up to €75,000 (except for personal injury actions when jurisdiction is limited to €60,000), although when a case has been appealed to the Circuit Court from the Employment Appeals Tribunal (EAT) in relation to any remaining legacy cases under the old system (see Section I.ii), it has jurisdiction to exceed this limit and make awards up to the jurisdictional level of the EAT. There is no longer a right of appeal to the Circuit Court under the new Workplace Relations system for cases issued on or after 1 October 2015. The Circuit Court also has potentially unlimited jurisdiction in relation to gender equality cases. When the sums involved in a contractual claim exceed €75,000, the action must be brought in the High Court, which has unlimited jurisdiction. Only the Circuit Court and High Court can hear applications for injunctive relief.

ii The Workplace Relations Commission

The WRC is an independent statutory body established on 1 October 2015 following the Workplace Relations Act 2015 (the 2015 Act). The WRC took over the functions of the National Employment Rights Authority, the Labour Relations Commission, the Equality Tribunal and the first instance (complaints and referrals) function of the EAT. The WRC is the sole body to which all industrial relations disputes and complaints in accordance with employment legislation will be presented. All claims issued prior to 1 October 2015 before any of the relevant bodies will be dealt with under the old system, until they have fully concluded.

Pursuant to the 2015 Act, the WRC provides conciliation, advisory, mediation and early resolution services, as well as an adjudication service. The latter (formerly the Rights Commissioner service) investigates disputes, grievances and claims made under the relevant employment legislation. A complaint may also be referred to mediation if deemed suitable and on consent of the parties; otherwise, it will go before an adjudicator. The WRC also has discretion to deal with complaints by written submission only, unless either party objects within 42 days of being informed.

A major difference compared to the old system is that all WRC hearings are held in private.

Prior to the outbreak of the covid-19 pandemic in early 2020, WRC hearings were held in-person or face-to-face only. However, owing to the challenges posed by the pandemic in holding hearings on either basis, specific legislation was introduced during the course of 2020 to allow the WRC to hold virtual or remote hearings.

An employer has 56 days from the date of the decision to implement it and should the employer fail to do so, the employee may apply to the District Court for an order directing the employer to fulfil the order. If the decision relates to the UDA, and the decision was to reinstate or re-engage the employee, the District Court may substitute an order to pay compensation of up to 104 weeks' pay, in accordance with the UDA. In the context of claims under the UDA, the WRC has powers to require witnesses to attend and give evidence at a WRC hearing or to produce any documentation in the person's possession, custody or control that relate to the case.

The WRC also has powers to carry out workplace inspections to ensure compliance with employment legislation.

iii Labour Court

Since 1 October 2015, the Labour Court is the single appeal body for all workplace relations disputes. A Labour Court decision may be appealed on a point of law only to the High Court. The Labour Court can choose to deal with a dispute by written submissions only, unless either party objects. Unlike the WRC, all hearings before the Labour Court are held in public, unless it decides, owing to special circumstances, that the matter should be heard in private. Similar to the WRC, prior to the covid-19 pandemic, Labour Court hearings were held in-person or face-to-face only; however, the Court now has a facility (pursuant to specific legislation introduced during the course of 2020) to allow virtual or remote hearings to be held also. The Court has wide powers under the 2015 Act to require witnesses to attend and to take evidence on oath.

II YEAR IN REVIEW

The year 2020 was extraordinary. The covid-19 pandemic presented the Irish government, businesses and wider society with a series of new and extreme challenges, touching every aspect of daily life. For employers, the challenges were vast and ranged from the sudden mass mobilisation to remote working (in just one day for many employers) to managing pay cuts, redundancies and the wage support scheme, planning for the return to work and the tax and other risks created by multiple remote employees remaining overseas. Other critical issues during the summer months included managing temperature and covid-19 testing, dealing with covid-19 related workplace inspections right through to how employers can start preparing for vaccinations. Our once largest challenge, Brexit, also remained on the agenda in 2020 as many employers started to work through its implications in managing personal data transfers and moving the governance of their European Works Councils from UK to Irish law.

A trend that emerged from 2020 is that remote working in some shape or form is likely to have a role in the post-pandemic employment landscape. In this context, the government's Programme for Government (the Programme), published in 2020, contains commitments to facilitate remote working and bring forward proposals regarding a right to disconnect.

Previously planned increases to parental leave entitlements came into effect in 2020 and, in Budget 2021, the government also proposed increasing the parent's leave entitlements. These are due to come into effect in 2021 (see Section IX).

In late 2020, planned changes to the pension age (which was due to increase to 67 in January 2021 and to 68 in 2028) were put on hold. A Pensions Commission has since been established to examine sustainability and eligibility issues in respect of state pension arrangements and it will outline options for the government to address issues such as qualifying age, contribution rates, total contributions and eligibility requirements. The Pensions Commission is due to submit a report on its work, findings, options and recommendations to the relevant government minister by the end of June 2021.

The government also initiated a public consultation on the proposed introduction of a statutory right to paid sick leave for all employees in Ireland and committed to introducing a statutory sick pay scheme that is affordable for employees and offers protection for employers as quickly as possible.

Gender pay gap legislation also remains on the legislative agenda and, in late 2020, the Minister for Children, Equality, Disability, Integration and Youth announced his intention to bring forward a strengthened draft of the gender pay gap legislation in early 2021.

III SIGNIFICANT CASES

i Injunction during probationary period

O'Donovan v. Over-C Technology Limited & Over-C Limited[2]

Mr O'Donovan was employed with the defendant employer as a chief financial officer (CFO) but was summarily dismissed during his probationary period for sub-standard performance. Mr O'Donovan sought to appeal the decision internally in accordance with a contractual right to do so but, when the parties could not agree a date for the appeal, his dismissal was confirmed.

Mr O'Donovan sought an interlocutory injunction in the High Court preventing his dismissal on the basis that it was a breach of contract and a breach of his implied contractual right to fair procedures. It is notable that Mr O'Donovan's employment contract provided that the employer was required to assess Mr O'Donovan's performance within his probationary period and, if it was not up to the required standard, the employer was permitted to either take remedial action or terminate employment. The employment contract also provided that the disciplinary rules and procedures that applied to Mr O'Donovan's employment were those in the employee handbook and that the procedures (which formed part of the contract) incorporated a right to appeal any disciplinary action. Mr O'Donovan claimed that he was not notified of any performance issues prior to his dismissal, that he was not afforded an opportunity to appeal and his employer's disciplinary procedures were a breach of his rights under his employment contract.

The High Court granted an injunction pending the trial of the action and ordered the defendant to pay Mr O'Donovan his salary for six months on the condition that Mr O'Donovan would be available to carry out any duties of a CFO that the defendant may require. However, the defendant could choose to place him on a leave of absence rather than assign any duties to Mr O'Donovan and could appoint a new CFO if it saw fit.

2 [2020] IEHC 291.

ii Constitutionality of the WRC

Zalewski v. Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General[3]

This is a long-running case in which the applicant, Mr Tomasz Zalewski, is challenging the constitutionality of the Irish employment dispute resolution bodies (i.e., the WRC and Labour Court) as established under the WRA. The High Court delivered its judgment in this case in early 2020.

Mr Zalewski's primary argument is that the WRC carries out the administration of justice that he alleged was in breach of the rule under the Irish Constitution that, subject to limited exceptions, only courts may administer justice. The core arguments advanced by the state, as the respondents, were that (1) a decision of the WRC lacks the character of a binding determination and (2) employment disputes have not traditionally been regarded as justiciable, that is to say employment disputes have not traditionally fallen within the purview of the courts.

On this, the High Court found that the WRC does not carry out the administration of justice because, for instance, it does not have the ability to enforce its own decisions. Instead, a party seeking to enforce a WRC decision must bring an application to the District Court (which also has the power to modify the form of redress ordered by the WRC). The High Court said that this deprived decisions of the WRC (and, indeed, the Labour Court) of one of the essential characteristics of the administration of justice.

Mr Zalewski's second (alternative) argument was that some of the statutory procedures under the WRA were deficient because they fail to vindicate his personal constitutional rights in that:

a the hearings take place in private;
b there is no requirement for the adjudication officers of the WRC (or members of the Labour Court) to hold a legal qualification or have legal experience;
c there is no provision for the taking of evidence on oath or affirmation; and
d there is no express statutory right to cross-examine witnesses.

On this, the High Court examined the WRC's procedures in detail and concluded that they were not unconstitutional and Mr Zalewski's case was dismissed accordingly. It appears that the constitutional protections offered by the Labour Court (e.g., that, unlike the WRC, its hearings are held in public) played an important part in the decision. The decision was subsequently appealed to the Supreme Court by Mr Zalewski and the appeal was heard in late 2020, with the outcome being eagerly awaited.

iii Protected disclosures

Clarke v. CGI Food Services Limited and CGI Holdings Limited[4]

The plaintiff, Mr John Clarke, was employed as a group financial controller with the defendant employer for just over two years until his dismissal in May 2019. Mr Clarke claimed his dismissal was due to protected disclosures he made mainly relating to his employer's compliance with food safety and financial irregularities (e.g., personal spending on company credit cards and unvouched expenses). Mr Clarke also claimed that he became marginalised

3 [2020] IEHC 178.
4 [2020] IEHC 368.

by directors and senior management and that queries around his performance (which ultimately led to adverse findings against him, a period of suspension and a disciplinary hearing) were only raised after he had made protected disclosures. Mr Clarke successfully applied to the Circuit Court for interim relief and his employer was ordered to maintain his pay and benefits pending the determination of his unfair dismissal claim in the WRC. The employer appealed that order to the High Court and a summary of the key points in this decision, delivered during the course of 2020, is below. This decision is a significant development of the case law under the PDA, as it is the first High Court decision in relation to interim relief under the PDA and it also provides useful guidance in terms of the scope of what types of complaints may be considered to be protected disclosures.

In general terms, the High Court's decision examined three key issues: (1) whether the complaints Mr Clarke made were 'protected disclosures'; (2) what relevance (if any) is the fact that Mr Clarke did not make reference to 'protected disclosures' until after his dismissal; and (3) the significance of the employer's argument that the ground for dismissal was alleged performance issues.

In terms of point (1), above, the High Court found that one can make a protected disclosure without invoking the PDA or using the language of 'protected disclosure'.[5]

In terms of point (2), above, the High Court dismissed the employer's contention that the fact that Mr Clarke had not made any mention of protected disclosures until after his dismissal should be factored into the court's analysis of the context (reality) of the dismissal. This was rejected by the Court on the basis that the lack of any reference to protected disclosures until after dismissal was not a bar to Mr Clarke later doing so.

In terms of point (3), the Court also rejected the employer's arguments that Mr Clarke was dismissed on performance grounds and found that the evidence before the Court established substantial grounds for contending that Mr Clarke's performance issues were an attempt by the employer to dress up the dismissal as performance-related when it was likely that the dismissal resulted wholly or mainly from Mr Clarke having made a protected disclosure.

Ultimately, the High Court upheld the order of the Circuit Court and ordered that the employer must continue Mr Clarke's pay and benefits from the date of the WRC's determination and any appeal.[6]

5 Of note also is that the High Court analysed a particular provision in the PDA that essentially provides that a matter will not be considered to be a protected disclosure if it is the function of the employee to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer. In other words, merely finding that a complaint is made pursuant to the discharge of the employee's duties would not be sufficient to exclude it from the definition of protected disclosure as the wrongdoing would also have to be other than on the part of the employer.

6 The High Court also directed that a copy of the judgment and papers from the proceedings are sent to the Department of Agriculture, Food and the Marine and the Revenue Commissioners for whatever investigations they consider appropriate.

IV BASICS OF ENTERING INTO AN EMPLOYMENT RELATIONSHIP

i Employment relationship

Under the Terms of Employment (Information) Act 1994–2014 (the Terms of Employment Act), all employers are obliged, within two months of commencement of employment, to provide their employees with a written statement setting out certain fundamental terms of their employment:

a date of commencement of employment;
b full name and address of employer, and name of employee;
c the employee's place of work;
d the job title or a description of the nature of the work;
e if a temporary or fixed-term contract, the expiry date;
f pay, including overtime, commission and bonus, and methods of calculating these;
g whether pay is to be weekly, monthly or otherwise;
h the pay reference period;
i terms and conditions relating to hours of work and overtime;
j holiday or other paid leave entitlement;
k notice requirement;
l details of rest periods and breaks;
m details regarding sickness and sick pay;
n details of pensions and pension schemes; and
o reference to any applicable collective agreements.

The Employment (Miscellaneous Provisions) Act 2018 requires an employer to notify an employee of five core terms of employment within five days (as distinct from five business days) from the commencement of employment. The five core terms are:

a the identity of the employer and of the employee;
b the address of the employer;
c in the case of a temporary employment contract, its expected duration, or if the contract is for a fixed term, the date on which the contract expires;
d the rate or method of calculating pay, the intervals at which the employee is paid and the pay reference period; and
e hours of work that the employer 'reasonably expects' the employee to work (in a normal working day and working week). Notably, the phrase 'reasonably expects' is not defined in the 2018 Act.

This provision supplements, rather than replaces, an employer's existing obligations under the Terms of Employment Act, including the obligation to provide certain information to employees who are required to work outside Ireland for a period of more than one month.

The written statement and the notice of core terms must be signed and dated by or on behalf of the employer. It must also be retained by the employer during the employment and for one year after the employment has ceased. Any change to the statutory particulars must be notified to the employee, in writing, within one month.

If either the written statement or the notice of core terms is not provided as required within one month of the commencement of employment, the employer will be liable for a criminal offence, resulting in a fine of up to €5,000 or imprisonment not exceeding 12 months (or both).

More generally, it is recommended that employers consider what other terms might be necessary and appropriate, and prepare comprehensive contracts. Other relevant terms will depend on the seniority of the employee, and will range from intellectual property and exclusivity of service provisions, to post-termination restrictive covenants. Any changes or amendments to the employment contract of a material nature can be implemented, generally, only with the agreement of both parties.

Separately, fixed-term contracts are permissible and they are governed by the Protection of Employees (Fixed-Term Work) Act 2003, which provides that when individuals are employed on a series of fixed-term contracts, which exceed the aggregate period of four years, they may be entitled to a contract of indefinite duration.

ii Probationary periods

There is no legislation that deals with probationary periods. Therefore, a probationary period will only be effective if expressly provided for. The terms of the probationary period, including duration, the length of notice and whether or not the employer has discretion to extend it, should be set out in the contract.

Although there is no statutory limit on how long an employee can be retained on probation, he or she will be covered by the UDA once 12 months' continuous service is accrued, which will include any period of notice of termination. Accordingly, the right to protection against unfair dismissal will apply once the 12-month service threshold has been reached, even if the employee is still on probation. Employers will therefore usually seek to conclude the probationary period before the employee completes 12 months' service.

iii Establishing a presence

An employer does not need to be registered as an entity, or otherwise, based in Ireland. In practice, and for varying tax and regulatory reasons, a large number of Irish employees across all sectors are employed by and report to foreign entities based outside Ireland. Similarly, it is also possible to hire employees through an agency without registering in Ireland.

However, foreign employers will be required to register for pay-as-you-earn (PAYE) income tax in Ireland when the income of its employees is within the scope of the Irish PAYE system. In addition to registration, the employer must deduct the amount of income tax due from its employees directly and remit those amounts to the Revenue Commissioners. If, however, the foreign employer is engaging an independent contractor, the responsibility to pay the appropriate taxes lies with the independent contractor, not the foreign employer.

Income from non-Irish employment that is attributable to the performance in Ireland of the duties of that employment is also chargeable to Irish income tax and is within the scope of the PAYE system.

As regards mandatory benefits, as a minimum, an employer is required to provide its workforce with access to a personal retirement savings account within six months if it does not have a pension scheme available to its employees. There is also no obligation on the employer to make any contributions on an employee's behalf.

V RESTRICTIVE COVENANTS

The Competition Act 2002–2017 (as amended) prohibits agreements between undertakings that prevent, restrict or distort competition. As employees are considered to be part of an undertaking and are not undertakings themselves, the Competition and Consumer

Protection Commission (CCPC) considers that employment agreements are not covered by the competition rules. However, once an employee leaves an employer and sets up his or her own business, he or she will then be regarded as an undertaking. The CCPC has set out guidelines as to what types of non-compete provisions, in particular, will be acceptable in these situations. Generally, they must be reasonable in subject matter, geographical scope and duration.

The common law is also of relevance to the issue of restrictive covenants. The basic position applied by the courts is that restrictive covenants are, *prima facie*, unenforceable for being unduly in restraint of trade, unless the party seeking to rely on them can demonstrate that the restrictions in question are no more than what is strictly necessary to protect a legitimate business interest and are not otherwise contrary to the public interest.

VI WAGES

i Working time

The OWTA deals with maximum working hours and other matters relating to working time. Under the OWTA, an employer may not permit any employee to work for more than an average of 48 hours per week, although this can generally be averaged over four months. Working time should only take account of time spent working (i.e., it should exclude rest and meal breaks). The average period for night workers is two months; for employees working in agriculture and tourism it is six months; and it can be up to 12 months for employees covered by an approved collective agreement.

Employees cannot opt out of the 48-hour average working week. However, the legislation does provide a particular exemption for senior or specialist employees, who can be said to determine their own working time, such that they are not subject to the restriction. The contracts of these types of employees should expressly provide that they are exempt from this part of the OWTA.

ii Overtime

Generally, there is no statutory entitlement to overtime under Irish law, or to payment for overtime. In certain cases, however, specific categories of workers may be entitled to overtime pay if covered by a sectoral employment order (SEO).[7]

Those employees not covered by an SEO will only be entitled to paid overtime if such an entitlement is contained in their employment contract or has been established by custom and practice in the employment sector concerned. Section 14 of the OWTA provides that employers who require employees to work on Sundays are required to compensate them in accordance with Section 14, unless the employment contract specifies that the fact that the employee may be required to work on a Sunday is already taken into account in determining the salary.

7 As an aside, it should be noted that the High Court recently found that the specific legislative framework underpinning certain sectoral employment orders [SEOs] for the electrical sector was unconstitutional. This decision also affects other SEOs in the construction and mechanical engineering sectors. The state has brought an appeal to the Supreme Court against this decision, and the outcome is eagerly awaited. The parts of the High Court's decision relating to the validity of other SEOs has been stayed pending the outcome of that appeal.

VII FOREIGN WORKERS

European Economic Area (EEA) nationals, Swiss nationals and nationals of the United Kingdom do not require employment permits to work in Ireland. For non-EEA nationals (other than Swiss and UK nationals), different types of employment permits are available depending on the circumstances. Some non-EEA nationals will also require an entry visa, in addition to an employment permit, depending on their nationality. An employment permit will generally not be granted if the result in doing so means that more than 50 per cent of a company's employees are non-EEA nationals (Swiss and UK nationals are not counted as non-EEA nationals for the purposes of this rule); however, there are some limited exceptions to this.

Intra-Company Transfer Employment Permits can be granted for senior management roles, key personnel or employees engaged in a training programme. Critical Skills Employment Permits (CSEPs) can be granted to individuals earning €64,000 or more, or if the role is listed on the Critical Skills Occupations List[8] and the applicant has a relevant third-level degree, earning between €32,000 and €63,999. If an individual does not meet the criteria for either of the above permit types, a General Employment Permit is also available in certain circumstances, subject to a labour market needs test to ensure that there are no EEA, Swiss or UK nationals available to fill the post.

Most employment permits can be granted for an initial period of up to two years, after which they can be renewed, if required. A CSEP can only be granted for a job offer for a minimum of two years, after which the holder may apply for a Stamp 4 permission to continue to work in the state without an employment permit.

There is no specific legal requirement for an employer to keep or maintain a register of foreign workers (although it is good practice to do so). However, an employer is legally required to keep a record of the employment of any foreign national employed under an employment permit, the duration of the employment and the particulars of the employment permit for five years or, if greater, the duration of the employment. A certified copy of the employment permit issued by the Department of Enterprise, Trade and Employment must also be kept at the employee's place of work and produced in the case of a WRC inspection. Once an employee is legally able to work in Ireland, he or she is entitled to the same statutory benefits and subject to tax as if he or she were an Irish national. The employee will also have the protection of, and be subject to, the employment laws in Ireland once the employee is working in Ireland.

The Employment Permits Acts 2003–2014 apply significant penalties for employing non-EEA nationals without a valid employment permit. The maximum penalty for this offence is a fine of up to a €250,000 or up to 10 years' imprisonment (or both).

VIII GLOBAL POLICIES

The UDA requires employers to provide employees with a written disciplinary procedure, which can either form part of the contract of employment or be kept as a separate document. This information must be furnished to employees within 28 days of commencement of employment. Although this takes no specific form, it must at least adhere to the concept

8 This list is reviewed twice yearly by the Department of Enterprise, Trade and Employment, and sets out occupations that have been identified as being in shortage in the local labour market.

of natural justice and fair procedure as enshrined in the Irish Constitution. There is also a non-binding Code of Practice concerning grievance and disciplinary procedures in the workplace, which provides general guidelines in relation to the preparation and application of disciplinary procedures. Although not obligatory, failure to apply the guidelines (in the absence of any other express procedure) could be held against an employer should an employee dispute his or her dismissal.

Employers are not required to obtain the approval of employees regarding the preparation or implementation of disciplinary procedures, although agreement in relation to these matters will often be obtained when collective bargaining takes place. A disciplinary policy must not discriminate against employees contrary to the Employment Equality Acts 1998–2015 (i.e., on one of the following nine grounds: gender, family status, age, disability, sexual orientation, race, religion, civil status or membership of the Traveller community), and must otherwise be fair and reasonable (i.e., provide that an employee is made aware of all the charges against him or her, is afforded a reasonable opportunity to rebut the charges and is afforded adequate representation throughout the process). Additionally, the level of sanctions should be staggered to reflect the seriousness of the offence. It will suffice for the disciplinary policy to be available on an employer's intranet, provided employees are made aware of this. If the employer does not have this facility, employees should be advised of where they can obtain a copy of the policy. The policy should generally, as a matter of best practice, be available in English and in any other language spoken by employees. Disciplinary procedures do not have to be filed with any state or government authority.

IX PARENTAL LEAVE

There are various forms of leave available to parents in Ireland, each affording particular rights and entitlements.

i Maternity leave

All female employees have a basic entitlement to take maternity leave of 26 consecutive weeks, regardless of their length of service. This basic entitlement may be extended if a baby is born prematurely.

There is no obligation on an employer to pay an employee who is on maternity leave, though many employers do offer to top up maternity benefit to match an employee's normal remuneration. However, the employee may be entitled to social welfare payments, provided she has accrued sufficient pay-related social insurance contributions.

An employee is also entitled to 16 additional weeks of unpaid maternity leave. This additional leave carries no entitlement to social welfare payments.

An employee must give four weeks' notice in writing to the employer of her intention to take maternity leave. Employees are also entitled to paid time off during working hours for prenatal and postnatal medical appointments.

With the exception of the right to remuneration, all other employment rights are preserved during maternity leave. This includes continuity of service and entitlements to other forms of leave, such as annual and sick leave.

Notice of termination of employment given during maternity leave is void. An employee has a right to return to the job held prior to going on maternity leave. If this is not reasonably practicable, the employer must provide suitable alternative work under a new contract of employment.

ii Adoptive leave

An adopting mother or sole adopting father is entitled to 24 weeks' adoptive leave. Employees availing of this leave may be entitled to receive social welfare payments, provided sufficient social insurance contributions have been paid. Employees are also entitled to additional unpaid adoptive leave for a further 16 weeks; however, no social welfare payments are payable in respect of this period.

Notice of termination of employment given during adoptive leave is void and, on return to work, the employee has a right to the job held prior to availing of adoptive leave, or to suitable alternative work if this is not reasonably practicable.

Adopting parents are entitled to paid time off work to attend preparation classes and pre-adoption meetings with social workers as required during the pre-adoption process.

iii Paternity leave

Employees who are fathers, or partners in same-sex relationships who have newly adopted a child, are entitled to take two consecutive weeks' paternity leave. This leave must be taken in a single block within 26 weeks of the date of birth of the child (or the date of placement in the case of adoption).

There is no obligation on an employer to pay an employee during paternity leave. However, the employee may be entitled to social welfare payments, provided sufficient pay-related social insurance contributions have been paid.

Notice of termination of employment given during paternity leave is void and, on return to work, the employee has a right to the job held prior to availing of paternity leave, or to suitable alternative work if this is not reasonably practicable.

iv Parental leave

As of 1 September 2020, parents are entitled to 26 weeks' parental leave in respect of a natural child, an adopted child or a child in respect of whom the employee acts *in loco parentis*. This leave must be taken before the child reaches 12 years of age. This upper age limit can be extended in certain circumstances when an adopted child is involved. In the case of a child with a disability, leave may be taken up to the child reaching 16 years of age. There is no obligation on the employer to pay the employee during parental leave, nor is there any entitlement to social welfare payments during this time.

To qualify for parental leave, an employee must have completed one year of continuous service with the employer. However, if an employee has more than three months but less than one year of continuous service, the employee may be entitled to parental leave for one week for each month of continuous employment.

An employee is entitled to return to work at the end of a period of parental leave on the same terms and conditions held prior to availing of parental leave or, if this is not reasonably practicable, to suitable alternative employment. An employee has a right to request changes to his or her working hours or patterns for a set period following the return from parental leave. The request must be made in writing no later than six weeks before the commencement of the proposed set period. An employer must consider the request but is not obliged to grant the requested changes.

Employees are protected from dismissal in the same manner as with all other forms of leave, as outlined above.

v Parent's leave

Under the Parent's Leave and Benefit Act 2019, employees who are a 'relevant parent' (i.e., a parent of a child, a cohabitant, civil partner or spouse of a parent, an adopting parent or a cohabitant, civil partner or spouse of an adopting parent) and whose child was born or adopted on or after 1 November 2019, are currently entitled to two weeks' leave, which may be taken in one continuous block or as two separate blocks. Parent's leave must currently be taken within 52 weeks of the birth of the child or the date of placement in the case of adoption. A relevant parent must give his or her employer at least six weeks' notice before the intended commencement of the parent's leave.

An employee is not entitled to be paid by an employer during parent's leave; however, an employee may be entitled to apply for a parent's leave benefit provided he or she has accrued sufficient pay-related social insurance contributions. An employer may choose to top up the parent's benefit in the same manner as other forms of leave.

If an employer is satisfied that the taking of leave would have a substantial adverse effect on the operation of his or her business, profession or occupation, the leave may be delayed by up to 12 weeks. An employer who postpones this leave must give the employee at least four weeks' notice of the intention to do so.

Employees are protected from dismissal in the same manner as with all other forms of leave, as outlined above.

From April 2021, the parent's leave entitlement will increase to five weeks for each relevant parent and the parent's benefit will be extended to cover the five-week period. A relevant parent will be able to take the leave within the first two years of the birth of the child or within two years following adoption placement, provided the child is born or adopted (as the case may be) on or after 1 November 2019. Legislation is required for this change to be implemented.

X TRANSLATION

There is no statutory requirement for employers to translate employment documents into other languages, and traditionally employers have provided these documents in English only. Best practice, however, and a decision of the Equality Tribunal (now the WRC) in 2008[9] suggests that it may be prudent to make these documents available in other languages, depending on the circumstances.

Although there is no clear direction on exactly which documents are required to be translated or explained, the *Goode* decision, and common sense, would dictate that this should be done in respect of documents such as the contract of employment and any documentation ancillary to it.

The Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012 is an example of an employment code and guidelines building on the *Goode* decision. It outlines

9 *58 Named Complainants v. Goode Concrete Limited* (DEC-E2008-020). It was held that employers should have in place clear procedures to ensure non-Irish employees are able to understand their employment documentation and are not treated less favourably than Irish employees. The Equality Officer also found that if an employer is not in a position to have these documents translated, it should arrange to have the contracts and other documentation explained to all employees by someone who speaks a language they understand, with the employee signing a form acknowledging that the contract has been explained to them and that they understand its contents.

that employers should ensure that staff have access to equality policies, including by means of certain measures 'to provide, where necessary, for the translation of policies and procedures into languages other than English as appropriate with provision of interpreters'.

If documents are not translated or explained to an employee, the employer faces the risk of discrimination claims, under which the employee can be awarded up to two years' gross remuneration.

XI EMPLOYEE REPRESENTATION

The concept of employee representation under Irish law relates to both unionised and non-unionised employees, and is derived from a number of sources (statutory and otherwise).

i Trade union representation

Any employee has the right to join a trade union, although trade unions may not legally compel employers to recognise and negotiate with them. The degree to which trade unions may embark on industrial action (either to try to gain recognition from employers, or for any other reason) is regulated principally by the Industrial Relations Act 1990. The method of appointing employee representatives is done by way of secret ballot.

ii Information and consultation representation

In addition to any local representation arrangements that may exist (whether with trade unions or otherwise), employees may also be entitled to representation in certain circumstances as a matter of statute. This form of representation can arise in a transfer of undertakings, collective redundancy situations or when the employees are covered by a local or European-level works council.

The Transnational Information and Consultation of Employees Act 1996 (as amended) (which implemented Council Directive 94/45/EC on the establishment of a European Works Council) (the 1996 Act) requires multinational employers of a certain size to set up European Works Councils to inform and consult their employees on a range of management issues relating to transnational developments within the organisation. The 1996 Act applies to undertakings with at least 1,000 employees in the European Union and 150 or more employees in each of at least two Member States. A special negotiating body (SNB) is established in accordance with the 1996 Act to negotiate with the employer. The duration and functions of the SNB will be subject to the terms and purpose of the works council agreement put in place. The Employees (Provision of Information and Consultation) Act 2006 obliges employers with at least 50 employees to enter into a written agreement with employees or their elected representatives, setting down formal procedures for informing and consulting them. The legislation will only apply if a prescribed minimum number of employees request it. The legislation is silent on how employee representatives are elected, and it will be up to the employees to determine how this is conducted, but usually it is done by way of secret ballot. The purpose of the role of employee representatives and how they conduct themselves will be subject to their own agreement.

The Employment Equality Acts provide that no employee should be discriminated against for being a trade union member. Further, all the above legislation specifically provides that no employee representative should be penalised for carrying out his or her function as an employee representative.

XII DATA PROTECTION

i General principles

Issues regarding the keeping and disclosing of personal data relating to employees are governed by the General Data Protection Regulation (GDPR) and the DPA 2018. Under the GDPR, an employer established in Ireland that gathers, stores and processes any data about employees in any computerised or structured manual filing system is deemed to be a controller of that data.

Controllers must follow eight fundamental data protection rules:

a obtain and process information lawfully, fairly and in a transparent manner;
b only keep the information for one or more specified, explicit and legitimate purposes;
c process the information only in ways compatible with these purposes;
d ensure the information is processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing, and against accidental loss, destruction or damage, using appropriate technical and organisational measures;
e keep the information accurate, complete and up to date;
f ensure that the information is adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed;
g retain the information for no longer than is necessary; and
h be responsible for and demonstrate compliance with the above principles.

When collecting personal data from an employee, the controller is required to provide certain information to the employee, including:

a the identity and contact details of the controller;
b the contact details of the data protection officer (if applicable);
c the purposes of the processing and the legal basis for the processing;
d the recipients or categories of recipient to which personal data has been disclosed;
e the safeguards provided by the employer if it transfers personal data to a third country or international organisation;
f the period for which personal data will be stored;
g the existence of the various data subject rights;
h the employee's right to request rectification, erasure or restriction, or to object to this processing;
i the right to lodge a complaint with the Data Protection Commission (DPC);
j the existence of automated decision-making, including profiling (if applicable); and
k information about the source of the data, if not obtained directly from the employee.

In practice, most of this information may be provided in the employer's privacy notice.

Employees have a number of rights under the GDPR, including the right (subject to certain exceptions) to obtain a copy of any personal data relating to them that is kept on the employer's computer system or in a structured manual filing system by any person in the organisation.

The GDPR does not specify how to make a valid rights request, so it may be done verbally or in writing, and employers must usually respond to the request within one calendar month of receipt of the request. The right of access to personal data does not apply if that access would adversely affect the rights and freedoms of others.

Under the GDPR, all public bodies and authorities (other than courts acting in their judicial capacity) are mandated to have a data protection officer (DPO), as well as any employer whose core activities consist of:

a data processing operations that, by virtue of their nature, scope and purposes, require regular and systematic monitoring of employees on a large scale; or

b data processing on a large scale of the special categories of data and data relating to criminal convictions.

Where appointment of a DPO is not mandatory but one is appointed through choice, the organisation will be subject to the same provisions set out in the GDPR as though the appointment was mandatory. A DPO may be a member of staff at an appropriate level (part-time or full-time), a person external to the organisation or one shared by a group of organisations, provided that the person has the required expertise and that any other role that may be held in the organisation does not give rise to a conflict of interest with the DPO role.

Details of DPOs must be registered with the DPC and published to relevant individuals (including employees and other data subjects).

ii Cross-border data transfers

Ireland, like other EU Member States, restricts the transfer of personal data from Ireland to jurisdictions outside the EEA that do not 'ensure an adequate level of protection', unless the transfer meets one of a number of conditions, including, but not limited to, the following:

a the transfer is pursuant to the standard contractual clauses that have been specifically adopted by the European Commission for international transfers of data;

b the transfer is to an entity that is located in a country that has been subject to an adequacy decision by the European Commission; or

c the transfer is pursuant to binding corporate rules put in place within the employer's group and approved by the DPC (or another relevant lead supervisory authority).

iii Special categories of personal data

The GDPR defines special categories of personal data to include data concerning racial or ethnic origin, political opinion, religious or philosophical beliefs, or trade union membership, and genetic data, biometric data for the purpose of uniquely identifying an individual, or data concerning health, sexual life or sexual orientation. Special categories of personal data may not be processed by an employer except in very limited circumstances (e.g., when the processing of health data is required to assess the working capacity of an employee). The processing of data relating to criminal convictions and offences may only be carried out under the control of official authority and subject to other conditions set out in the DPA 2018.

iv Background checks

Employers can carry out a number of background checks on applicants for employment. These can include reference checks, credit history checks, education verification, verification of entitlement to work in Ireland and a pre-employment medical assessment. Before carrying out any background checks, the resulting data must be relevant to the individual's role and the employer will need to have established a lawful basis under the GDPR to obtain and process the data. In respect of any method used to verify a prospective employee's background, it should be ensured that the method is applied consistently to all applicants, and is not discriminating on any one of the nine grounds protected by the Employment Equality Acts

(see Section VIII). The ability to process criminal data is greatly restricted by the GDPR and the DPA 2018. As noted in Section XII.iii, the processing of data relating to criminal convictions and offences may only be carried out under the control of official authority and subject to other conditions set out in the DPA 2018.

XIII DISCONTINUING EMPLOYMENT

i Dismissal

An employer can, at common law, terminate an employment contract without cause, provided this is done in accordance with its terms. If a term of the contract is breached, however, this can give rise to a claim for damages at common law, or even to a claim for injunctive relief in certain circumstances. Notwithstanding any express contractual right to terminate, employees are afforded statutory protection against unfair or discriminatory dismissal. Under the UDA, an employer cannot lawfully dismiss an employee unless substantial grounds exist to justify termination. Also, it is essential for an employer to be able to establish that fair procedures have been followed before making a decision to dismiss. Subject to certain exceptions, employees must have accrued at least 12 months' continuous service to qualify for protection under the UDA.

To justify a dismissal, an employer must generally be able to show that it resulted wholly or mainly from one or more of the following grounds:

a the capability, competence or qualifications of the employee for the work concerned;
b the conduct of the employee;
c the redundancy of the employee's role; or
d the employee being prohibited by law from working or continuing to work (e.g., not holding a valid work permit where one is required).

If the dismissal is not because of any of the grounds listed above, there must be some other substantial grounds to justify it. If an employee believes that he or she has been unfairly dismissed, he or she may bring a claim to the WRC. An adjudicator can award redress in the form of compensation (subject to a maximum of two years' gross remuneration), reinstatement or re-engagement.

A dismissal is automatically deemed unfair under the UDA if an employee can show that his or her dismissal was wholly or mainly attributable to one of the following:

a membership or proposed membership of a trade union or engaging in trade union activities;
b religious or political opinions;
c legal proceedings against an employer in which an employee is a party or a witness;
d race, colour, sexual orientation, age or membership of the Traveller community;
e pregnancy, giving birth, breastfeeding or any other matters connected with pregnancy or birth;
f making a protected disclosure under the PDA; or
g the exercise or proposed exercise by the employee of the right to parental leave, *force majeure* leave, carer's leave, maternity leave, adoptive leave, paternity leave or parent's leave.

If an employee alleges that he or she has been dismissed in a discriminatory manner (i.e., on one of the nine grounds upon which discrimination is prohibited by the Employment Equality

Acts (see Section VIII)), he or she may bring a claim before the WRC and subsequently before the Labour Court on appeal. Either of these bodies may award compensation (subject to a maximum of two years' gross remuneration, depending on the claim), reinstatement or re-engagement. In gender discrimination cases, a claim may be made directly to the Circuit Court, which can, in theory, award unlimited compensation. There is no minimum service threshold for an employee to be covered by this legislation.

Once in continuous employment for at least 13 weeks, an employee is entitled to a minimum period of statutory notice of termination. The minimum length of the notice period will depend on the employee's length of service (although greater periods of notice can be provided for by contract):

a between 13 weeks and two years' service: one week's notice;
b between two years' and five years' service: two weeks' notice;
c between five years' and 10 years' service: four weeks' notice;
d between 10 years' and 15 years' service: six weeks' notice; and
e 15 years' or more service: eight weeks' notice.

An employee may waive the right to notice and accept payment in lieu. Alternatively, the contract can stipulate a right to pay in lieu of notice. An employer may dismiss an employee without notice or payment in lieu of notice if the employee has fundamentally breached the employment contract amounting to a repudiation of the employment contract, or if the employee is guilty of gross misconduct.

To settle a dispute, including a redundancy situation, compromise or claim, the parties can enter into a settlement agreement. For the settlement agreement to be enforced, as a matter of contract law, the employee must receive something over and above what they might otherwise be entitled to (i.e., an *ex gratia* payment). The employee should also be advised in writing and given the opportunity to obtain independent legal advice in relation to the terms of the agreement.

ii Redundancies

The Protection of Employment Act 1977 must be complied with when an employer intends to implement collective redundancies. Collective redundancy occurs when, within a period of 30 days, the number of such dismissals is:

a at least five in an establishment employing more than 20 but fewer than 50 employees;
b at least 10 in an establishment employing at least 50 but fewer than 100 employees;
c at least 10 per cent of the number of employees at an establishment employing at least 100 but fewer than 300 employees; and
d at least 30 in an establishment employing 300 or more employees.

When collective redundancies are proposed, the employer must first enter into consultation with employee representatives, a trade union or a works council, with a view to reaching an agreement in relation to matters such as the possibility of avoiding or reducing the numbers to be made redundant and the criteria to be used in selecting employees for redundancy. The consultation must commence at least 30 days before notice of the first redundancy is issued. The Minister for Employment Affairs and Social Protection must also be notified at least 30 days in advance of the first notice of termination by reason of redundancy being confirmed.

The Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 established a redundancy panel to which employees or employers may

refer certain proposed collective redundancies for an opinion and possible Labour Court hearing in circumstances where it is alleged that the dismissed employees will be replaced by new employees on lesser terms and conditions of employment. Should such a finding be made and the employer proceeds with the redundancies nonetheless, it will be exposed to significantly increased liabilities, *inter alia*, if claims are brought by the dismissed employees under the UDA.

Although there is no express statutory form of consultation required for individual redundancies, it is best practice to do so. In this regard, it is also recommended that employers make at least some effort to identify an alternative position for the employee, if possible. As with any other form of dismissal (other than in cases of gross misconduct), notice of termination by reason of redundancy or payment in lieu thereof must be given.

It is also possible, when concluding the redundancy process, to enter into a compromise agreement with the employee, whereby he or she would receive an *ex gratia* payment in return for him or her waiving his or her rights and entitlement to bringing any claim against the employer.

Any employee who is on protected leave (e.g., maternity or paternity leave) cannot be made redundant, and the employer will have to wait until he or she returns before engaging with him or her on the issue.

XIV TRANSFER OF BUSINESS

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (the Regulations) apply in circumstances where there is any transfer of an undertaking, business or part of an undertaking or business from one employer to another employer as a result of a legal transfer or merger. The Regulations include an assignment or forfeiture of a lease. Outsourcing of a service has also constituted a transfer within the meaning of the Regulations. The Regulations apply to any transfer within the European Union, although the UK case *Holis Metal Industries Limited v. GMB & Newell Limited*[10] suggests that they might also apply to transfers outside the European Union or EEA, in respect at least of the obligations of the party to the transfer located within the European Union. This extraterritorial aspect of the Regulations is particularly relevant in the context of outsourcing. The importance of the Regulations and the need to assess carefully whether they apply in any given situation cannot be underestimated.

Transfer is defined as 'the transfer of an economic entity which retains its identity'. When a transfer within the meaning of the Regulations occurs, the acquiring party will be obliged to employ the employees of the disposing party on terms and conditions no less favourable than those previously enjoyed by them, and with their prior service intact. A lapse in time between the transferor ceasing business and the transferee resuming the business does not necessarily prevent there being a transfer of the business for the purposes of the Regulations. In assessing whether or not the Regulations apply, consideration must be given to the type of business concerned, whether there has been a transfer of assets, whether any employees have been transferred, whether customers have transferred and to what extent the activity carried on before and after the transfer is similar.

When a transfer is taking place, it is important that the transferor and transferee take steps to ensure that the employees are informed in advance. In practice, employee

10 [2008] ICR 464.

representatives must be informed of the reasons for the transfer and the legal, economic and social implications of the transfer for the employees, and also of any measures that are envisaged in relation to the employees. This information must be communicated at least 30 days in advance of the transfer, where possible, to enable the representatives to be consulted in relation to any measures concerning the employees. The obligation to consult only occurs when there are measures envisaged in relation to the employees.

The Regulations do make provisions for transfer-related dismissals when the dismissals are because of economic, technical or organisational reasons that result in changes in the workforce. However, this defence is generally only available to the transferee. This makes it difficult for employers to implement changes before the sale of their business to make the business more attractive to prospective purchasers.

With regard to breaches of the Regulations, employees may bring complaints to the WRC, with a right of appeal to the Labour Court.

XV OUTLOOK

The covid-19 pandemic looks set to bring further challenges for the Irish economy, businesses and wider society during 2021 and potentially into 2022. Having said that, the Economic and Social Research Institute recently forecast that they expect the economy to grow by 4.9 per cent in 2021 but that the unemployment rate is likely to be 10 per cent by the end of 2021.

Though a 'no-deal' Brexit was narrowly avoided in late 2020, Brexit is likely to have a significant effect on the Irish economy and to bring further challenges for employers in Ireland as they, together with employers in other EU Member States, adapt to the new relationship with the United Kingdom. We can expect employers to continue to address the challenges of personal data transfers and the governance of their European Works Councils as a result of Brexit.

We also expect that employers will be keeping a close eye on certain legislative developments in 2021, including, in particular, the strengthened draft of the gender pay gap legislation (which is expected to be published in early 2021) and the draft legislation introducing a statutory right for employees to request to work from home (which the government has committed to publishing in the third quarter of 2021). The government has also committed to publishing a Code of Practice on the Right to Disconnect in the first quarter of 2021 and, at the time of writing, the WRC has recently concluded a public consultation on this, with a view to drafting the Code of Practice. We also suspect that the topic of the right to disconnect will be very much in focus generally in 2021, particularly given that the government published its National Remote Work Strategy – Making Remote Work in early 2021. The stated vision of the strategy is to ensure remote working is a permanent feature in the Irish workplace in a way that maximises economic, social and environmental benefits.

We expect to see the WRC and Labour Court increasing the number of virtual and remote hearings being scheduled during 2021, which will be welcomed by employers and employees alike.

The publication of the Pension Commission's report later this year will be eagerly awaited by employers, as will any subsequent legislative developments. If the Irish government follows through on its commitments in late 2020, we may also see the introduction of a statutory right to paid sick leave for employees in Ireland in 2021.

Appendix 1

ABOUT THE AUTHORS

BRYAN DUNNE

Matheson

Bryan Dunne is a partner and head of the employment practice at Matheson. He advises on a variety of aspects of employment law, both contentious and non-contentious. This work includes advising on senior executive service agreements and termination strategies for international employers, defence work in contentious employment litigation matters and all employment aspects of commercial transactions. He also regularly advises employers on internal grievance and disciplinary processes, with a particular focus on employees at senior executive level.

Bryan's clients include a broad base of leading international companies and financial institutions, requiring diverse advice on compliance, operational and management issues in running their Irish business. Owing to his involvement in some of the largest Irish and cross-border corporate transactions in recent years, Bryan has also built up considerable experience in the employment aspects of commercial projects and reorganisations when acting for foreign purchasers, including TUPE, employee relocation and post-acquisition restructuring. He has also led the employment due diligence on a number of high-value private equity investments and acquisitions, covering numerous industry and regulated sectors in both the public and private sectors.

COLIN GANNON

Matheson

Colin Gannon is an associate in the employment, pensions and benefits group. He advises clients across various industries in both the public and private sectors on all aspects of the employment relationship, from recruitment and day-to-day management to the termination of employment (including dispute resolution and mediation).

Colin advises on all aspects of contentious and non-contentious employment law matters, including contractual and policy matters, workplace investigations, dismissals, redundancies, disciplinary processes, performance management processes, employee relations issues, senior executive appointments and terminations, and advising on the employment aspects of corporate restructurings, outsourcings, and individual and collective redundancy situations.

MATHESON

70 Sir John Rogerson's Quay
Dublin 2
Ireland
Tel: +353 1 232 2000
Fax: +353 1 232 3333
bryan.dunne@matheson.com
colin.gannon@matheson.com
www.matheson.com

an LBR business

ISBN 978-1-83862-773-7