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The Workplace Relations Act 2015 – A new dawn?

Introduction

The much-debated Workplace Relations Act, 2015 ("**the Act**") which comes into operation on 1 October 2015 will apply to employment legislation and equal treatment legislation and provides for the resolution, mediation and adjudication of employment disputes and complaints. The Act contains a number of novel provisions and it will be interesting to see how it operates in practice. The Act will wipe away the existing dispute resolution infrastructure of the Employment Appeals Tribunal and the Equality Tribunal and replace them with a new **Workplace Relations Commission** ("**the Commission**" or "**the WRC**"). The Labour Court will hear any appeals from the Commission.

The Act creates a number of offences and provides that where an employee is employed by a corporate entity, a prosecution may be brought against a director, manager, secretary or other officer where the offence is committed with their consent or connivance. As to sanctions, in addition to any fine, a convicted person will have to pay the Commission's costs and expenses unless there are special and substantial reasons.

The Commission

Under the Act, the Commission is given a wide role in promoting good workplace relations, providing guidance, doing research, and providing advice and information. The Chief Executive of the WRC will be called the "Director General" ("**DG**") and will hold office for an initial term of 5 years (with a maximum of up to 10 years) and will

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report to the Minister for Jobs, Enterprise and Innovation ("**the Minister**"). The Commission may furnish draft Codes of Practice to the Minister (except in respect of the Employment Equality Act 1998) and, once approved, a Code of Practice will be admissible in any proceedings.

The DG may appoint Inspectors and those who already hold such position at the date of commencement of the Act will automatically continue in office. Inspectors will have a warrant of appointment which they must produce for inspection, if requested. They will have their usual wide powers to enter work premises, take copy documents and require information from the person in charge. Entry to a dwelling, however, will require consent or a warrant to be issued by the District Court.

It will be an offence to obstruct an Inspector or to fail or refuse to answer questions. Other than in respect of a charge of obstructing an Inspector or failure to comply with an Inspector's requirements, statements and/or admissions made will not be admissible in proceedings for an offence under the Act.

Where an Inspector is satisfied that a contravention of a relevant statutory provision has taken place, he may serve a Compliance Notice on the employer which will state the grounds upon which it is issued, require the employer to do or refrain from doing a certain act(s) by a set date and inform the employer about the appeal process. In appropriate circumstances, an Inspector must furnish the employer with a notice confirming that the employer has complied with a Compliance Notice. An employer may appeal to the Labour Court, which, on appeal, can affirm the Compliance Notice or withdraw it, with or without directions to the employer. The employer may further appeal the Labour Court's decision to the Circuit Court. It should be noted that failure to comply with a Compliance Notice is an offence under the Act.

One of the more contentious provisions of the Act is one which allows certain information to be disclosed (e.g. employer's registration number, employee's PPS number). Information regarding the possible commission of an offence may be disclosed to the Commission and the Commission may in turn pass on this information to an "official body" (which includes: Gardaí, Revenue, ODCE, Health & Safety and a list of other official bodies).

Of relevance to large scale procurement projects is the fact that the Commission may disclose to a "Public Contracting Authority" that an employer has contravened an employment enactment and the Commission may require a Public Contracting Authority to disclose contraventions to it.

The Commission will be obliged to co-operate with official bodies such as the Gardaí and the Revenue Commissioners, which includes sharing information (unless such disclosure is prohibited by law).

In certain circumstances, an Inspector will be able to issue a fixed payment notice for up to €2,000 and the employer will have 42 days to pay. If the employer pays the fine then no prosecution can be brought.

Complaints and Disputes

The "Claimant" or a "Specified Person" (which, essentially, is anyone who would previously have been entitled to present a complaint and/or dispute under the old system) on their behalf may make a complaint, in writing, and the DG must then refer it to an Adjudication Officer unless he determines that it should go to mediation.

If the DG does determine that a matter should go to mediation, the Act allows him to appoint Mediation Officers and to refer a dispute to mediation unless a party objects. If there is no such objection, a private "mediation conference" will be held and if the dispute is settled then there will be a signed, binding agreement, a copy of which will be sent to the DG. It should be noted that mediation communications are confidential and that the terms of a mediated settlement cannot be disclosed except in enforcement proceedings. If the dispute is not settled at mediation, however, the matter will then go forward for adjudication.

Adjudication Officers ("**AOs**") are appointed by the Minister. However, any Rights Commissioner or an Equality Officer holding such position at the date of commencement of the Act will automatically be appointed as an AO.

The AO will inquire into the complaint, allow parties to be heard and present relevant evidence and will then issue a written decision. Proceedings before an AO will be held in private. However, their decisions will be published by the WRC on the internet (without identifying the parties). This latter aspect is likely to be seen to benefit both employees and employers, alike.

Time Limit

The general time limit for making a complaint will be 6 months from the alleged contravention in each particular case, but this period may be extended by a further 6 months if there is "reasonable cause".

An interesting provision of the Act is that an AO will have the power to dismiss a claim if he considers it frivolous or vexatious. The affected party could then appeal to the Labour Court, which can either affirm or annul the AO's decision.

Enforcement of an Adjudication Officer's Decision

A party may appeal an AO's decision to the Labour Court, in writing, within 42 days. This time limit can be extended in exceptional circumstances. Proceedings before the Labour Court will be in public unless there are special circumstances, and its decisions shall be published "as it thinks fit". Additionally, the Labour Court may refer a question of law to the High Court whose determination will be final.

If the employer fails to comply with a Labour Court decision within 42 days it can be enforced in the District Court. In such a case, the District Court will not hear the employer and it can award Courts Act interest. Again, a party before the Labour Court can appeal a Labour Court decision to the High Court on a point of law and the High Court's decision will be final.

If an employer does not comply with an AO's decision within 56 days, and if the employer has not appealed it to the Labour Court, then the District Court, again without hearing the employer, must make an order directing the employer to comply with the decision. Where the AO's decision is to order re-instatement or re-engagement, the District Court may substitute an award of compensation of up to 104 weeks' remuneration. The District Court may award Courts Act interest to be paid on any award of compensation, between 42 days after the AO's decision and the District Court Order.

Disposal of Complaints by Written Submission

A novel provision of the Act will allow the DG or the Labour Court to notify the parties of an intention to deal with a matter by written submissions only but if a party objects to this then the DG or Labour Court cannot do so.

The DG or the Labour Court will be permitted to strike out complaints or appeals if they have not been pursued within the previous year. In such circumstances, the parties will be notified and the proceedings will not continue any further. It is not yet clear what the party can do to pursue its claim once lodged, and it must be anticipated that the power will be used sparingly. The implementation of this provision will be keenly watched.

One provision of the Act which is likely to be seen as controversial is that it will be an offence not to pay compensation unless the employer can show that, on the balance of probabilities, it was unable to pay due to its financial circumstances. The penalty on summary conviction is a Class A fine and/or 3 months imprisonment.

Conclusion

The Act has been a long time coming. There were promises of radical reform of employment law but consolidation of the law has not been delivered and practitioners will still be left contending with a complex web of employment law statutes. What is to happen is the replacement of the current system of dealing with claims and the hope is that the process will be streamlined and will become more efficient. Whether the Act is a new dawn or a false dawn remains to be seen.

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