

# More to HR:

## Getting the Balance Right

by Derek McKay

**In the latest article on the Lifecycle of the Employee, Derek McKay, Managing Director at Adare Human Resource Management provides advice to employers on how to effectively protect employees and themselves by implementing not just compliant policies and procedures, but best practice HR.**

There is a plethora of employment acts in place to help protect employees during their employment that can be difficult to navigate at times. It may feel that much of the legislation is stacked against employers, which can be mirrored by the "guilty until you're proven innocent" Unfair Dismissals legislation. But, by ensuring your organisation's understanding of the employment legislation is well-informed and your HR policies and procedures are compliant, up-to date, effectively communicated out to all employees and consistently applied, there is a lot less cause for concern.

Employment legislation is continuously evolving to ensure it is fit for purpose in a modern employment market. Changes in policy can include health and safety, employment law, pensions legislation as well as minimum wage, parental entitlements, workers' compensation and retirement, among others.

Ensuring your organisation is compliant with the latest legislation can be time-consuming but the consequences for being non-compliant are costly, financially and reputationally. Having sight of any legislative changes and their impact on your organisation is crucial. Any new employment legislation rarely comes as a surprise to HR professionals but what we often discover is how slowly that legislation

is acted upon and compiled with by employers.

### Getting the basics right

Every employer is obliged under The Terms of Employment (Information) Acts to provide employees with a written statement setting out the terms and conditions of their employment. This statement must be given to new starts within the first two months of commencing employment and provides detailed information on the role and remuneration as well as various employment terms associated with their employment such as working hours, place of work, etc.

It is strongly recommended that organisations have a comprehensive employee handbook in place that works with the statement of terms and conditions and this should contain all key HR and employee policies, from those that are legislatively driven to those that are the better HR practices. It is worth noting that through the proposed enactment of the Employment (Miscellaneous Provisions) Bill 2017, employers will be required to issue to new employees, within 5 days of commencement of employment, a document containing 5 core terms of employment including name of employer and employee, address of employer, rate and method of calculating pay, normal length of working day and week etc.



Given our experience and the challenge employers currently face in issuing compliant statements of terms and conditions as is currently required within two months, this new legislation when enacted will prove extremely challenging for a significant number of employers to comply with.

The Organisation of Working Time Act 1997 regulates employees' working hours, including rest periods. The Act states that an employee should not work more than 48 hours in a seven-day period, with the average calculated over a reference timeframe of four months. It states that an employee

is entitled to a 15-minute break every four and half hours, or a half hour for every six hours worked with at least 11 consecutive hours rest in every 24 hours. There are a number of exemptions under the Act that employers should familiarise themselves with depending on the industry they are operating in. The Act also provides for nine public holidays. Claims taken under this legislation are very common and what is equally as common, is an employers' inability to successfully defend such claims due to the absence of appropriate documentation and records. This is equally true as it relates to an employers' ability to demonstrate compliance with this employment legislation when subject to an inspection by the WRC.

As well as terms and conditions of employment, employers also need to provide a written summary of disciplinary and grievance procedures under the Unfair Dismissals Acts 1977-2015, often provided as part of an Employee Handbook. This must be provided within 28 days of commencement of employment. Our recommendation for clients is to ensure these documents are provided on the first day of employment, or beforehand where possible so that there is no misunderstanding at a later date.

There have been numerous cases through the Workplace Relations Commission that could have been avoided if employers had supplied the required documentation and correct information at the start of employment. One such case involved an employee of a power tools company who had worked as a receptionist for over seven years when she resigned from her position in May 2018. The complainant brought a case to the WRC stating that she never received a statement of her terms and conditions, despite asking for same on a number of occasions. She also claimed that her employer failed to notify her of changes to her terms of employment. The claimant stated that in February 2017 a number of roles that she

previously held were taken away from her. Following this, she requested a statement in writing from the respondent setting out her new duties, which she never received before her resignation.

According to the respondent, when they checked their files they could only find an unsigned copy of the complainant's contract of employment and copies of documentation dating 2011 and 2014 that she had received the Employee Handbook. While the respondent disputed the complainant's assertion that a number of her duties were taken from her but that there were some changed by mutual agreement to secure her role.

In accordance with the Terms of Employment (Information) Act the adjudicator found in favour of the complainant and awarded her compensation in relation to the fact that she never received a statement of her terms and conditions of employment.

### Equality in the workplace

Under the Employment Equality Acts 1998 - 2015, employees are protected against discrimination on nine grounds, including gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community. It is important to note that employers are responsible for the actions of their employees during the course of the working day even if these actions are carried out without their knowledge. Therefore, it is crucial that employers take appropriate steps to prevent harassment or discrimination in the workplace.

A WRC case in September found in favour of a complainant under The Employment Equality Acts and awarded her €30,000. The complainant, a solicitor, suffered from epilepsy and had requested on six separate occasions that she be allowed work from home. However, her requests were refused. In finding





in favour of the complainant, the adjudicator found that the failure of the employer to make any reasonable accommodation for the employee over her request to work from home was in breach of the Employment Equality Act.

Another high-profile case which found in favour of the complainant under The Employment Equality Acts was that of Cox and RTE. Ms Cox had two contracts of employment with the broadcaster with separate terms and conditions.

One of the contracts was a full-time contract with a retirement age of 65 while the other was a casual contract, which saw her rostered for one day every six weeks. Her full-time contract finished in March 2016 and following that, the complainant said she was told she would continue to be rostered but that a period of time would have to elapse between

her retirement and being placed on the roster for her casual contract. However, she was later told in December of that year that her casual contract had also been terminated.

RTE argued that the retirement age was clearly specified in her full-time contract. However, the adjudicator found that the broadcaster had discriminated against Ms Cox on age grounds and awarded her €50,000.

### **Safety, Health and Welfare at Work**

The Safety, Health and Welfare at Work Act 2005 provides that "every employer shall ensure, so far as reasonably practical, the safety, health and welfare at work of his or her employees". Therefore, the onus is on employers to put in place all preventative and protective measures to ensure the safety of employees, including identifying potential hazards

and the assessment of any risks likely to cause an accident. The Act places a number of duties on the employer, which should be reviewed depending on the nature of an organisation's business. The Act also requires an employer to appoint at least one "competent person" to be responsible for all health and safety matters in the workplace.

Earlier this year, a Cork-based company pleaded guilty in court to offences under the Safety, Health and Welfare at Work Act. The company was fined €50,000 after it admitted to exposing workers to asbestos during the demolition of a building. While this case highlights a potential extreme example of safety in the workplace, employers should take note that it is ultimately their responsibility to ensure the welfare of employees and take measures to carry out appropriate assessments, including the use of any office equipment.

### **Maternity and Paternity Leave**

There are several key pieces of employment legislation providing statutory leave protections to employees. Employees are covered by a number of Acts that accommodate leave in the event of a birth, including The Maternity Protection Acts 1994 and 2004, The Paternity Leave and Benefits Act 2016 and The Paternal Leave Act 1998 - 2006. Under the Maternity Protection Acts, employees are entitled to 26 weeks' leave together with an additional 16 weeks' additional unpaid leave. Employers are not obliged to pay a salary during maternity leave.

The Paternity Leave and Benefits Act entitles an employee to a single period of two weeks leave as well as receipt of social welfare benefit. Given this is relatively new legislation, it is important for employers to familiarise themselves with it.

Also, it is important to highlight the change to parental leave in the recent Budget. The Parental Leave

Act allows for parents to take leave of up to 18 weeks in respect of each child. However, unlike maternity and paternity leave, an employee taking parental leave is not currently entitled to social welfare benefit. However, in the 2019 Budget, a new Parental Leave Scheme was announced that will give two weeks' leave for each parent, covered by social welfare. This scheme won't come into effect until November 2019.

### Complexity of employment legislation

Given the complexity and sheer volume of employment legislation in place to protect employees, it is not surprising the increasing number of cases currently going through the WRC. Whilst we have just noted some of the key pieces of employment legislation, there are a number of fundamental steps any organisation can and should take to not only ensure compliance, but

also to move towards the better HR practices. At Adare Human Resource Management, we have an expert team that can advise on a wide range of HR and employment law issues, ensuring your organisation follows best practice and implements the legislation appropriately.

**Adare Human Resource Management are leading experts in Employment Law, Industrial Relations and best practice Human Resource Management.**  
[www.adarehrm.ie](http://www.adarehrm.ie)



**Derek McKay,**

*Managing Director, Adare Human Resource Management,*

Leading experts in Employment Law, Industrial Relations and best practice HRM.

# 2019 Tax Publications

## Publishing soon from Bloomsbury Professional

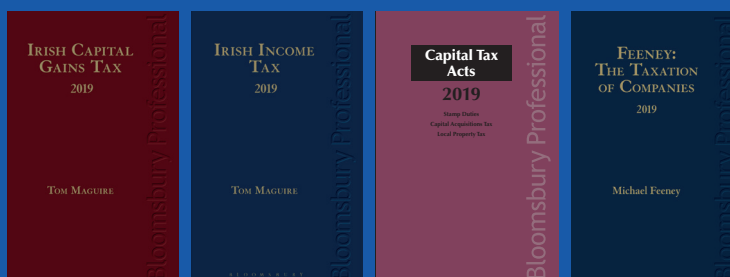
<b>Capital Tax Acts 2019</b>	Michael Buckley	€125	9781526506887	Paperback	Feb 19
<b>Feeney: The Taxation of Companies 2019</b>	Michael Feeney	€225	9781526506917	Hardback	Feb 19
<b>Irish Capital Gains Tax 2019</b>	Tom Maguire	€225	9781784517342	Hardback	Feb 19
<b>Irish Income Tax 2019</b>	Tom Maguire	€225	9781526506962	Hardback	May 19
<b>Bloomsbury Irish Tax service (1-3 user licence)</b>		€950 + VAT per annum*	Online	Available Now	
We offer free trials – for more information contact Sean O'Neill ( <a href="mailto:seanoneill@bloomsbury.com">seanoneill@bloomsbury.com</a> )					

Tax Acts and VAT Acts will now be online-only publications, which will be updated periodically throughout the year.

### 3 WAYS TO ORDER

Buy online at [bloomsburyprofessional.com](http://bloomsburyprofessional.com)  
Call 00353 (0)-6373920  
Email [jennifer.simpson@bloomsbury.com](mailto:jennifer.simpson@bloomsbury.com)

\* No VAT applied if VAT number supplied



**Bloomsbury Professional**  
Ireland



[bloomsburyprofessional.com](http://bloomsburyprofessional.com)