

Unemployment figures currently stand at 12.9% compared to 4.9% at the corresponding time in 2008. Business closures continue at an unprecedented rate. It is timely to consider some of the rights and obligations of employers and workers in relation to a contract of employment.

Contract of Employment

There is an erroneous belief that a contract of employment does not exist unless its terms are contained in a written document. However, anyone who works for an employer in Ireland for a regular wage or salary automatically has a contract of employment regardless of whether it is written or not. A contract of employment can be as detailed or as uncomplicated as the parties wish it to be.

A contract can provide for a probationary period. Unfair dismissals legislation shall not apply to the dismissal of a worker during the probationary period provided that the contract of employment is in writing and the period of probation is specified in the contract as being one year or less.

An employer is obliged by law to provide a worker with a written statement of certain terms of employment within the first two months of the commencement of the employment. This statement of terms is a comprehensive document and must include the following:

- Name of Employer and worker
- Address of Employer
- Place of work, title of the job or nature of the work.
- Commencement date.
- Expected duration of the contract (if temporary) and full details if the contract is for a fixed term.
- Details of rest periods and breaks
- Rate of pay or method of calculation of pay
- Hours of work and details of paid leave
- Sick pay and pension (if any)
- Periods of notice to be given by employer and employee
- Details of collective agreements if any.

Under many of these headings the worker may simply be referred to some other documentation such as a staff hand book, pension documentation, collective agreement etc.

This Statement of Terms of Employment does not in itself constitute a contract of employment but every contract between employer and worker should cover the areas referred to.

Disciplinary and grievance procedures.

There have been many instances where a worker dismissed with apparent justification has successfully taken an action against his employer. This generally has resulted from the employer's failure to have proper procedures in place in

relation to dismissal or failing to adhere to them. The Labour Relations Commission has published a Code of Practice which, although not legally binding, states that an employer should have written grievance and disciplinary procedures and that workers should be provided with copies when employed. The Unfair Dismissal Acts require employers, within 28 days of the commencement date of employment, to advise workers in writing of the procedures to be followed in relation to a dismissal. Where, there are procedures in place, it is in the best interests of an aggrieved party to comply with them before contemplating an unfair dismissals action.

Changes in Employment Contract (Including reductions in pay/hours)

Changes to an employment contract can result from a change in the law but otherwise variations must be agreed between the employer and worker. It is essential that both parties consent to any such changes. Where agreement is reached the worker must be provided with a document noting the changes within one month of their coming into effect.

Some businesses can no longer afford to pay workers the same level of remuneration as they have done in the past. To retain the viability of a business, some employers have reduced wages or working hours. Even where the future of a business is at risk an employer cannot unilaterally reduce the pay or working hours of a worker. There must be an agreement between employer and worker. [The Oireachtas passed legislation to permit reductions in public sector pay, obviating the need for an agreement]

If a worker does not agree to a proposed change the employer may decide to make him redundant if there is a genuine downturn in business or there is insufficient work for him to do. However, redundancy is essentially a dismissal and a worker dismissed in this way may qualify to bring a claim for unfair dismissal. If an employer is unable to prove that there was a genuine redundancy and that fair procedures were followed the dismissal may be found to have been unfair.

If an employer insists on reducing pay or working hours a worker may consider that he has no option but to resign and claim constructive dismissal because the employer has breached the terms of the employment contract. However, proving constructive dismissal can be problematic and a worker should seek legal advice before taking such a drastic step.

Redundancy

Redundancy occurs when a worker loses his job due to circumstances such as the closure of a business, a reduction in worker numbers, a reorganisation of the business or of the methods of working.

In selecting a particular worker for redundancy an employer should apply selection criteria that are reasonable and must ensure that they are applied fairly. A worker may be entitled to bring a claim for unfair dismissal where he considers that he was unfairly selected for redundancy or where a genuine redundancy situation did not exist.

In most cases a worker who has been in continuous employment for a period of two years will be entitled to a redundancy payment.

Lay-off and short time

Legislation provides for a reduction in working hours in two situations namely 'lay-off' and 'short time'. These concepts are designed to operate as temporary measures only. Lay off means a total suspension from work for a period of time whilst short time arises where the worker's remuneration is reduced by at least 50%.

Where an employee is laid off or on short time and there is no indication of a return to full time working, he may, in certain circumstances, give his employer notice of his intention to seek a statutory redundancy payment. The employer may in certain circumstances serve a counter claim to defeat the redundancy claim if he considers that the worker will be employed on a full time basis again in the short term. If the worker does not give notice to seek redundancy he could remain laid off or on short time indeterminately.

Legislation does not provide for a reduction in remuneration in respect of workers laid off or put on short time. The right to do so is governed by the contract of employment or by agreement between the parties involved.

Workers' Rights in Take Over and Merger situations

Where a business is taken over by another employer as a result of a legal merger or transfer the rights of workers are protected by law. The new employer is obliged to employ the existing workers and the terms and conditions in the workers' employment contracts are automatically transferred to him. Existing pension rights do not transfer to the new employer. For the employees' rights to be protected, there must be a 'transfer of undertaking' which means essentially that there is a change in the person responsible for running the business, the 'economic activity' carried on by the previous employer must be carried on by the new employer and the business must be transferred as a going concern.

There was a widely held view that a worker could object to the transfer of his employment to a new employer and claim redundancy from his previous employer. A recent High Court decision clarified the position. A worker may indeed object to the transfer to a new employer but this would be deemed to be a resignation from the employment of the new employer and the worker would therefore be unable to claim a redundancy payment from the previous employer.

Unfair Dismissal

Where a worker's contract of employment is terminated by his employer or the worker terminates his employment, because of the conduct of the employer, the worker may, under certain circumstances bring a claim for either unfair or constructive dismissal. It is important that the worker should avail of a grievance procedure if one exists before leaving his employment. A worker must be in the continuous employment of his employer for at least 12 months in order to bring such an action.

Employment law covers a broad canvas. All we have endeavoured to do in this leaflet was to take a cursory glance at aspects of a contract of employment whilst noting that it is, contrary to popular misconception, a bilateral agreement which requires that both parties, employer and worker, agree to its terms and to any subsequent variations in those terms. Either party departs from its terms at his peril.

We handle all matters of employment law for both employers and workers. We also provide a service for employers in drawing up employment contracts, grievance, disciplinary, harassment, bullying and safety at work policies.

If you need advice or assistance on an employment-related matter contact Fachtna O'Driscoll or Larry Power at:

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The above information is for general information purposes and does not constitute legal advice. Specific legal advice should be sought in relation to a particular legal problem.