Jurisdiction: Republic of Ireland
Date: May 2019

Impact date	Development	Impact
9 June 2018	European Union (Protection of Trade Secrets) Regulations 2018 (SI No. 188/2018)	These Regulations transpose European Union Directive 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure. The Regulations put the definition of "trade secrets" on a statutory footing for the first time in Ireland. They also provide for both civil and criminal redress for unlawful acquisition, use and disclosure of trade secrets. They also provide for civil redress measures in respect of the unlawful acquisition, use and disclosure of trade secrets. The Regulations amend section 5 of the Protected Disclosure Act 2014 to provide that, where a whistle-blower discloses a trade secret in the course of making a protected disclosure, the statutory protections of the 2014 Act will only apply where the whistle-blower has acted for the purposes of protecting the general public interest.
31 October 2018	*Irish Rail v McKelvey [2018] IECA 346*	A topic of debate for some time in Ireland is to what extent employees are entitled to be accompanied by a lawyer during internal disciplinary hearings. In October 2018, Ireland's Court of Appeal brought some much needed clarity to this topic. Significantly, the Court unequivocally endorsed the original Supreme Court position in Bu*rns and Hartigan*

		v Castlerea Prison, which found that legal representation need only be permitted in "*exceptional circumstances*". Given the potential impact of involving lawyers at an early stage in an internal HR process, ranging from i) delaying the process, ii) increasing the cost, iii) escalating litigation, and iv) fracturing relationships between employer and employee, this decision has been seen by employers as a welcome development.
31 October 2018	*Beechside Company Limited t/a Park Hotel Kenmare v A Worker [2018] LCR21798*	A recent Labour Court recommendation serves as a useful reminder to employers that they do not enjoy a carte blanche when it comes to dismissing employees on probation. The Labour Court accepted that an employer has a right to decide not to retain an employee in employment during their probationary period. However, it stated that *"this can only be carried out where the employer adheres strictly to fair procedures*". Employers should be aware that there are other avenues of redress available to employees dismissed during or at the end of their probationary period. It is also open to a probationary employee to apply to the High Court to restrain their dismissal where they can establish they are to be dismissed in breach of their right to natural justice and fair procedures. Case law confirms that due process must be followed in effecting a probationary dismissal. That does not mean that the full rigours of a company's disciplinary procedure must be followed prior to dismissing an employee on probation. It is however important that an employer can demonstrate a procedurally fair process has been followed.

		Employers should put in place a probationary review process, in the course of which an employee's suitability for continued employment is assessed. An essential part of such a process is a mid-probation review, whereby a probationary employee is informed of their progress on probation, notified of any performance concerns and afforded a reasonable opportunity to address those concerns prior to a decision being made on their continued employment. An end of probation review should also be held, at which an employee should be advised whether they are to be confirmed in their position, dismissed on notice or have their probationary period extended. In all cases, it is important a paper trail is kept.
4 December 2018	*Minister for Justice and Equality and The Commissioner of the Gardai Siochana v Workplace Relations Commission & Others C-378/17*	A recent decision from the Court of Justice of the European Union (**CJEU**) has determined that statutory bodies in Ireland such as the Workplace Relations Commission (**WRC**) can disregard provisions of national law which are contrary to EU law. This power was previously thought to be restricted to the Superior Courts This important decision has moved the bar with implications arising for litigants, in that they can now pursue matters of EU law before a diverse range of statutory bodies. The decision turned on the principle of primacy of EU law, which requires that EU law supersede national law where the two conflict and requires all national bodies to give full effect to EU rules. On that basis, the CJEU found that a national body established by law in order to ensure enforcement of EU law in a particular area (such as, in this case, the WRC) must have jurisdiction to disapply any provision of national law where it is contrary to EU law.

February 2019	*Grenet v Electronic Arts Ireland Limited [2018] IEHC 786*	In a recent High Court employment injunction case, a number of significant employment law issues for global employers were explored. In particular, the circumstances in which an employee can be terminated, with or without fault, and who within the business has the requisite authority to lawfully effect a dismissal. A cautionary tale for employers, this High Court decision highlights the important steps to be taken by an employer before triggering a dismissal process. It also confirms that termination of employment on notice is not as simple as it may sound. Employers in Ireland are permitted to terminate an employee's employment on notice. Such dismissals will, however, be "unfair" under the Unfair Dismissals Acts. The existence of performance or conduct issues may, depending on the facts, undermine an employer's ability to simply serve such notice and effect a "no fault" dismissal. In such circumstances, the employee may seek to "injunct" or prevent the dismissal on the basis that he or she was not afforded fair procedures in respect of the particular performance or conduct issue. The Court held that employees can challenge a no-fault termination which is "*dressed up to avoid unlawful conduct such as a breach of contract or a breach of a constitutional right to vindicate one's own name".* This decision serves as a warning for global businesses with Irish subsidiaries and the need to ensure that Is are dotted and the Ts crossed when it comes to effecting "no fault" dismissals if they are to survive High Court scrutiny in an injunction scenario.
4 March 2019	Employment (Miscellaneous Provisions) Act 2018	The Employment (Miscellaneous Provisions) Act 2018 was signed into law by the President on Christmas Day 2018 and commenced

		operation in the first week of March 2019. This new Act contains significant measures designed to improve the security and predictability of working hours for employees on insecure contracts or who work variable hours. Employers are now required to provide employees with a written statement setting out five core terms within five actual days (not business days) of starting employment. Zero hour contracts - employers will no longer be able to require employees to be available for work without specific set hours within a contract except in very limited circumstances. If an employer fails to require an employee to work 25% of their contracted hours, the employee is entitled to a minimum payment (equivalent to 25% of the contract hours or 15 hours, whichever is lesser, and calculated at 3 times the national minimum wage). This entitlement does not apply to employees who are required to make themselves available on an "on-call" basis. The Act enables employees, where their contract does not reflect the hours they have actually worked in the previous 12 months, to request to be placed in a specified "band" of weekly hours. The Act introduces much stronger anti-penalisation provisions within the Organisation of Working Time Act and the Terms of Employment (Information) Acts in order to protect employees looking to exercise these new rights. Given the possibility of criminal sanctions, including fines, and the strong anti-penalisation provisions within the Act, all employers should be fully aware of the new statutory obligations and ensure they are in compliance.

6 March 2019	Immigration Update	There have been a number of recent developments in Ireland which further facilitate Irish employers in recruiting skilled employees from outside the EEA. These changes allow for additional types of roles to be recruited from outside the EEA and are also aimed at improving the living arrangements of employment permit holders and their spouses/partners when they move to Ireland. The three key changes in this area relate to: • enactment of new employment permit regulations • spouses and partners of CSEP holders • re-entry visas *Employment Permit (Amendment) Regulations 2019* The Employment Permit (Amendment) Regulations 2019 were enacted on 22 April 2019. The Irish government periodically reviews the skills needs of the Irish market. The most recent regulations have added a number of occupations across the construction sector, sports and fitness industry and the health industry to the Critical Skills Occupations List. *Spouses and partners of CSEP holders* New immigration arrangements enacted on 6 March 2019 permit spouses/partners of CSEP holders to access the Irish labour market without the need to obtain an employment permit. Previously a spouse/partner of a CSEP-holder could apply for a separate spousal/partner work permit once they had secured a job offer in Ireland. This permit would allow a spouse to work in any role in Ireland, not just particularly highly skilled roles. This system proved

		to be unsatisfactory as the prospect of a long delay in processing the spousal permit application (up to 12 weeks in recent times) deterred many employers and proved to be a barrier to entry to the workforce for spouses of CSEP holders. Under the new regime, spouses/partners (who would have been on Stamp 3 permission before now) who currently live in Ireland and who do not possess an employment permit can make an appointment with their local immigration office and attend with their CSEP-holding partner / spouse to register for Stamp 1 permission. This will provide the spouse with immediate and full access to the Irish labour market without the need for an employment permit. Spouses/partners of CSEP holders who have not yet arrived in Ireland will be eligible for Stamp 1 permission without the need for an employment permit from the DBEI. As of 1 April 2019, a new pre-clearance process has been put in place for spouses/partners of CSEP holders. Pre-clearance for spouses/partners requires all non-EEA nationals to apply for a pre-clearance letter of approval (a PLOA) seeking permission to reside in the State as a family member of the CSEP holder prior to arriving in the State. Non-EEA nationals will not be allowed to enter the State until the PLOA has been processed. It is currently taking approximately eight weeks from the date of submission of the application, to have a determination on a PLOA application. The result of this change is that a spouse/partner will no longer be able to come to Ireland immediately with a permit holder. They must now get a PLOA after the relevant permit has issued prior to travelling to Ireland.

		Re-entry visas From 13 May 2019 visa required nationals who hold a valid Irish Residence Permit (IRP) card (formally a GNIB card) will no longer need a re-entry visa to travel in and out of Ireland. Their IRP/GNIB card and passport will be sufficient. Visa required nationals who do not hold a IRP/GNIB card will continue to require a valid visa. These new immigration arrangements have been described as demonstrating the Irish Government's *"commitment to ensuring that the State's migration policies are sufficiently agile to respond to the demands of the labour market".* This will be a welcome development for many employers whose continued growth and success depends on their ability to attract international talent to work in Ireland.
14 March 2019	*Nano Nagle School v Marie Daly [2018] IECA 11*	The much anticipated final instalment in this long-running discrimination case concerning the extent of an employer's statutory duty to reasonably accommodate an employee with a disability was heard by the Irish Supreme Court on 14 March 2019. The Court of Appeal had held (in 2018) that an employer's duty to reasonably accommodate its disabled employees does not extend to requiring an employer to employ a person in a position if they are not able to perform the essential duties of that position. We are currently awaiting issue of the Supreme Court judgment.
20 March 2019	*Zalewski v Adjudication Officer [2019] IESC 17*	The Irish Supreme Court handed down a landmark decision in March 2019 which focused on the constitutionality of Ireland's employment tribunal regime – i.e. the constitutionality of the Workplace Relations Act 2015. In particular, Mr Zalewski was granted permission to have his constitutional challenge heard before the Supreme Court given the "*general public im*portance" of

		its subject matter. Mr Zalewski claimed he was entitled to have his unfair dismissal and payment of wages claims heard before a court other than the Workplace Relations Commission (WRC). He also argued that the manner in which Adjudication Officers are appointed to the WRC, alongside the fact that the WRC hearings are conducted in a private setting, breaches individuals' constitutional rights to justice and fair procedures. The Supreme Court noted that WRC adjudicators are *"not required to have any particular qualification and more precisely no legal qualification*" and that the statutory provisions "*do not provide for and hence, do not permit an adjudication officer to take evidence upon oath and there is no penalty provided for any person who gives untrue evidence in the course of an inquiry into a claim*." This case has been remitted to the Irish High Court to assess the constitutionality of the Workplace Relations Act 2015. We are awaiting the decision of the High Court.
4 April 2019	Gender Pay Gap (Information) Bill 2018	The text of the Government's mandatory gender pay gap reporting legislation was published in April 2019. In amending the Employment Equality Acts 1998-2015, the Bill envisages that the Minister for Justice and Equality will make additional regulations that will require certain Irish employers to report and publish details of both their GPG and gender bonus gaps. Employers will also be required to provide, in their opinion, the reasons for such differences and outline the measures being taken

		by those employers to eliminate or reduce any GPG identified. The Bill envisages that employers with 250+ employees will be required to report and publish their GPG data. This threshold is expected to drop to 50+ employees in the future. Employer reports must include information including the difference in male and female remuneration, mean and median hourly pay for full and part time work, bonuses and percentage of employees receiving bonuses and benefits. The Bill also provides for publishing and contextualising the data. The Bill designates that officers will be empowered to investigate and report, but there are no financial sanctions. There is a separate private member's gender pay gap bill that is still before the Government in Ireland. It is expected, however, that the Government's own bill will take priority.
8 May 2019	Parental Leave Updates 1. Parental Leave (Amendment) Bill 2017; and 2. Parental Leave and Benefit Bill 2019	The Parental Leave (Amendment) Bill 2017 (the **2017 Bill**), proposes increasing the parental leave entitlement from 18 weeks to 26 weeks per child up until the child is 12 (rather than 8). It is intended that the parental leave entitlement per parent per child will increase from 18 weeks to 22 weeks in September 2019. This will further increase to a total of 26 weeks in September 2020. The 2017 Bill has completed the legislative process and is with the President for signing and enactment in the coming months. Separately, the Government published the General Scheme of its Parental Leave and Benefit Bill 2019 (the **2019 Bill**) which introduces paid parental leave for employees in Ireland for the first

		time. Subject to PRSI contributions, as of November 2019, during the first year of a child's life both parents will have access to two weeks parental leave. This will be paid by the State at the same rate as the current State Maternity Benefit (€245 per week) – i.e. the Parental Benefit. It is proposed that this Parental Benefit will gradually increase to seven weeks paid parental leave over the next three years. Similar to the situation of State Maternity and Paternity Benefit, it will be up to individual employers to determine whether or not to "top up" the Parental Benefit amount. Parental leave policies will need to be updated to reflect the new enhancements when the bills are enacted and accurate records of all applications should be maintained. The 2019 Bill proposes that such records should be maintained for eight years after the parental leave is taken and envisages class B fines for failure to keep such records.