

European (& the GCC) Employment Law Update

Jurisdiction: Republic of Ireland

Date: April 2018

Impact date	Development	Impact
7 December 2017	The Employment (Miscellaneous Provisions) Bill 2017	<p>This Bill is designed to tackle some of the difficulties caused by the increasing casualisation of work and use of zero hours contracts. It also aims to provide greater certainty to employees with precarious working conditions.</p> <p>The key measures are as follows:</p> <ul style="list-style-type: none"> (a) Five core employment terms are to be provided to employees within five days of commencing employment. (b) Minimum floor payment to be paid to employees to prevent the practice of calling employees into work but not providing them with any work. (c) Zero hours contracts will be prohibited except in certain limited circumstances, such as where they are necessary in an emergency or to cover routine absences. (d) The introduction of a banded hours provision. (e) Enhanced anti-penalisation protections for employees whose working hours do not reflect the reality of the hours worked over a particular reference period of eighteen months. <p>The Bill was published on 7 December 2017.</p>
11 December 2017	The new Irish Residence Permit (IRP) has replaced the 'GNIB card'	<p>The GNIB (Garda National Immigration Bureau) card will be phased out and replaced by the Irish Residence Permit (IRP). It does not give any new rights or entitlements.</p> <p>The IRP is a registration certificate and not an identity card.</p> <p>Non-EU/EEA and non-Swiss nationals (aged 16 and older) remaining in Ireland for over 90 days must register with the Irish immigration authorities to obtain an IRP.</p>

January 2018	Nano Nagle School (Appellant) v. Marie Daly (Respondent) [2018] IECA 11	The Court of Appeal confirmed that the 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 <u>essential duties</u> of that position.
January 2018	SI No 600 of 2017 Industrial Relations Act 1990 (Code of Practice on Longer Working) (Declaration) Order 2017	<p>This Code sets out best practice on engagement between employers and employees in relation to preparing employees for retirement.</p> <p>The Code reminds employers that compulsory retirement ages set by employers must be capable of objective justification both by the existence of a legitimate aim and evidence that the means of achieving that aim is appropriate and necessary. The Code provides examples of what may be considered a "legitimate aim" which include intergenerational fairness; health and safety; creation of a balanced age structure; and succession planning.</p> <p>The Code also provides that employers should ideally notify the employee of its intention to retire them on the contractual retirement date 6-12 months prior to that date. This should then be followed up with a face-to-face meeting which should focus on addressing a clear understanding of the retirement date and possible issues. Additionally, measures that would support the pathway to retirement should be explored, for instance, by considering whether flexible working would be appropriate or whether there should be changes to the employee's position when approaching retirement.</p> <p>The Code does not provide for penalties for failure to comply with its provisions but as with many statutory codes of practice, an employer's conduct is likely to be measured as against the standards set out in this Code where a dispute arises.</p>
1 January 2018	Mediation Act 2017	<p>This Act reinforces existing provisions recognising mediation in the Irish High and Commercial Courts and in the Rules of the Superior Courts.</p> <p>It places the obligation to consider mediation on a statutory footing and requires litigants to confirm to the Courts that they have considered mediation.</p> <p>This reform recognises that the mediation process has the potential to achieve better outcomes for the parties in many cases and can assist in alleviating the strain on the Courts system.</p>

		<p>Disputes before the Workplace Relations Commission (WRC) are expressly excluded from the ambit of the Act. The WRC already provides a separate mediation service for disputes between employees and employers which, in keeping with the overall spirit of mediation, is voluntary. However, the Act will apply to other employment related claims which are heard before the civil courts.</p>
1 January 2018	S.I. No. 440 of 2017 (National Minimum Wage Order 2017)	<p>The minimum wage has been increased to €9.55 per hour.</p> <p>This is a 30 cent increase on the 2017 rate and is on foot of the recommendations of the Low Pay Commission (a body set up in 2015 to make annual recommendations on the rate of the minimum wage).</p>
March 2018	Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018	<p>This is the second Sectoral Employment Order enacted into law following the establishment of the SEO framework by the Industrial Relations (Amendment) Act 2015.</p> <p>This SEO took effect on 6 March 2018 and applies to certain categories of workers in the mechanical engineering building services sector. In particular, the SEO applies to qualified plumbers and pipefitters, and registered apprentice plumbers and pipefitters, working in this sector.</p> <p>With effect from 6 March, all workers which this SEO applies to are entitled to the rates of pay specified in the SEO, premium payments for hours worked in excess of the normal working week of 39 hours and a right to participate in a pension scheme, death in service scheme and sick pay scheme.</p>
12 March 2018	Prohibition of Bogus Self-Employment Bill 2018	<p>This private member's Bill aims to address situations where workers are classified as "self-employed" but do not possess the characteristics or features of self-employment i.e. on paper they have a contract for services, but they are treated for all intents and purposes as an employee under a contract of services.</p> <p>As currently drafted, the Bill:</p> <ul style="list-style-type: none"> (a) defines the concept of "bogus self-employment" for the first time; (b) prohibits misrepresenting employment as a contract for services or falsely inducing a person to enter into a contract for services (rather than an employment arrangement); and

		<p>(c) provides for compensation awards for such "bogus" employees, coupled with potential liability, on the part of the employer, to the Revenue for consequent losses.</p> <p>The Bill was published on 12 March 2018.</p>
March 2018	Valerie Cox v RTE (ADJ-00006972)	<p>The WRC held that the Claimant had been discriminated against on age grounds by the decision of the national broadcaster not to offer her further work.</p> <p>The Claimant met the burden of proof test and established facts from which it could be presumed that there had been discrimination in relation to her on the grounds of her age.</p> <p>The WRC held that there was no objective justification for the difference in treatment and awarded her €50,000 for the effects of age discrimination.</p>
25 May 2018	The GDPR and the Data Protection Bill 2018	<p>The GDPR will be directly effective in all EU Member States without the need for any further national legislation. However, the Data Protection Bill 2018 will also be enacted as part of Ireland's GDPR transposition.</p>