

European (& the GCC) Employment Law Update

Jurisdiction: Republic of Ireland

Date: October 2018

Impact date	Development	Impact
January 2018	Nano Nagle School (Appellant) v Marie Daly (Respondent) [2018] IECA 11	<p>The Court of Appeal has overturned the decision of the High Court in a long running disability discrimination case. The Court held 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.</p> <p>The case is currently the subject of a Supreme Court Appeal.</p>
10 May 2018	Catherine Hurley v An Post [2018] IEHC166	<p>Significant award of €161,000 made to an employee who suffered bullying and harassment in the workplace. The decision is an important reminder to employers of their common law and statutory duties to ensure a safe place of work by preventing physical and mental injury. At a minimum, employers must have in place a robust and comprehensive Anti-Bullying Policy and take a proactive approach in both investigating and addressing complaints of workplace bullying.</p>
24 May 2018	Data Protection Act 2018	<p>The Data Protection Act 2018, along with the General Data Protections Regulation, outlines the current legislative regime in place for data protection rights in Ireland.</p>
13 June 2018	Parental Leave (Amendment) Bill 2017	<p>The Bill is currently before Dail Eireann for consideration. The legislation, as drafted, seeks to increase parental leave from 18 weeks per child to 26 weeks per child. The Bill also seeks to increase the age of eligible children from 8 years to 12 years.</p>

12 July 2018	Employment (Miscellaneous Provisions) Bill 2017	<p>The Bill aims to tackle the difficulties caused by casualization of work and the use of zero hour contracts. The proposed reforms would strongly impact employers in sectors where the use of flexible working arrangements is widespread, such as retail, tourism and hospitality.</p> <p>One of the most controversial aspects of the Bill is the potential for criminal liability if an employer incorrectly designates an employee as "self-employed".</p>
12 July 2018	Shared Maternity Leave and Benefit Bill 2018	<p>The Bill proposes amendments to the Maternity Protection Acts 1994 and 2004, and the Social Welfare Consolidation Act 2005. The draft legislation is currently before Dail Eireann, first stage.</p> <p>Proposals include that a pregnant employee may, if she so wishes, share minimum period of maternity leave with a relevant parent as shared leave.</p> <p>This parent may also share the State maternity benefit during any shared leave period.</p>
17 July 2018	Public Service Superannuation (Age of Retirement) Bill 201	<p>This Bill aims to increase the compulsory retirement age for majority of public servants to 70.</p> <p>The Bill is currently before the Seanad (Fifth Stage).</p>
19 July 2018	Kepak Convenience Foods Unlimited Company v Grainne O'Hara DWT 1820	<p>Labour Court determined that the employer had breached Section 15 of the Organisation of Working Time Act 1997 (the OWTA) by permitting the employee to work in excess of the statutory number of maximum working hours.</p> <p>The Court also referenced the obligations placed on employers by Section 25 of the OWTA and the necessity to ensure that records of employees working hours are maintained to demonstrate compliance with the legislation.</p> <p>The claimant was awarded compensation amounting to €7,500.</p>

1 September 2018	McCarthy v ISS Ireland Limited [2018] IECA 287	<p>In this case, the Court of Appeal considered the distinction between workplace bullying and negligence on the part of the employer.</p> <p>While the court determined that the employer was not vicariously liable for the actions of the claimant's alleged perpetrators, as the acts were not carried out during the course of their employment, the court did find that the employer had failed to provide the claimant with a safe place of work.</p> <p>To this effect, the court held that the employer was liable in negligence for injuries, loss and damage attributable to its negligence by not having the requisite policies and procedures in place to deal with the issues encountered by the claimant.</p> <p>Case remitted to the High Court for a determination of the issues of causation and damages.</p>
30 September 2018	Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017	<p>The Bill is currently before Seanad Eireann, Fifth Stage. The Bill will require certain employers to publish information relating to the pay of employees for the purpose of showing whether there are differences in the pay of male and female employees, and, if so, the nature and scale of such differences.</p> <p>There is a separate piece of legislation being proposed by the Government in parallel with the above Bill.</p>