The In-House Lawyer
Comparative guide
Ireland: Employment & Labour Law

Country author

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This country-specific Q&A provides an overview to employment and labour law in Ireland.

It will cover termination of employment, procedures, protection for workers, compensation as well as insight and opinion on the most common difficulties employers face and any upcoming legal changes planned.

This Q&A is part of the global guide to Employment & Labour.

1. Does an employer need a reason in order to lawfully terminate an employment relationship? If so, what reasons are lawful in the jurisdiction?
From a contractual perspective, an employer can lawfully terminate a contract of employment by providing an employee with his or her notice entitlement only, in the absence of any reason for the termination. This type of termination, referred to as a "no fault" dismissal is not without risk and as such, is advisable in specific circumstances only once an employer has sought legal advice.

However, notwithstanding a contractual entitlement to terminate on notice, an employee may potentially restrain his or her dismissal by way of injunction in circumstances where:

- the person purporting to effect the termination does not have the corporate authority to do so;
- the contract is not terminated in accordance with its terms; or
- the reason for the dismissal may damage the reputation of an employee (e.g. misconduct).

An employer is obliged to apply fair procedures before effecting a termination in such circumstances.

From a statutory perspective, Irish employees with more than one year's continuous service are generally protected as a matter of statute against the unfair termination of their employment (an "unfair dismissal"). Legislation provides for both lawful and unlawful reasons in termination situations. The general underlying principle being that the termination is deemed to be unfair unless it is for a potentially fair reason and a fair process is applied in effecting the termination.

The following are considered potentially fair reasons for the termination of an employment relationship:

- the capability, competence or qualifications of the employee;
- the conduct of the employee;the redundancy of the employee;
- the employer being prohibited by statute (whether impacting the employer or the employee) from employing the individual;
- other substantial grounds justifying the termination.

This list is exhaustive. Employers should be aware that a lawful reason alone will not justify the termination of an employment relationship. The lawful reason should be accompanied by a fair procedure implementing the termination in order for an employer to defend any subsequent legal challenge by the employee.

In circumstances where an employee is allegedly dismissed on ground of having made a protected disclosure (e.g. a whistleblowing complaint) an employee can seek to restrain his or her dismissal by way of a statutory injunction if they can demonstrate substantial grounds to contend that their dismissal is on grounds of having made such a disclosure.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned?
There are certain notification and consultation obligations that apply where an employer is planning to implement a collective redundancy. A collective redundancy means the dismissal for reasons unconnected to

the individual employee (usually interpreted as meaning redundancy) over any period of 30 consecutive days, of at least:

- 5 persons in an establishment normally employing more than 20 and less than 50 employees;
- 10 persons in an establishment normally employing at least 50 but less than 100 employees;
- 10% of the number of employees in an establishment normally employing at least 100 but less than 300 employees; or
- 30 persons in an establishment normally employing 300 or more employees.

In relation to the information and consultation obligations on an employer, the key points are that (i) consultation with employee representatives should take place at the earliest opportunity, and in any event, at least 30 days before the first notice of dismissal is given, (ii) the obligation to commence consultation also triggers an obligation to notify the Minister for Jobs, Enterprise and Innovation; and (iii) collective redundancies cannot take effect until 30 days after the date of notification to the Minister for Jobs, Enterprise and Innovation.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?
A termination of employment as a result of a business sale that involves the sale of shares should be treated similarly to the termination of employment in the ordinary course. The same standards apply in respect of ensuring that there is a fair reason for the termination and that a proper process is followed. Employees are afforded the same level of protection by statute when it comes to termination in the context of a business sale. A share sale does not generally trigger any mandatory information and consultation obligations unless collective redundancies are proposed.

Additional protections do apply to employees who are the subject of an asset sale. The European Acquired Rights Directive is applied in Ireland by the EC (Protection of Employees on Transfer of Undertakings) Regulations 2003 (the "TUPE Regulations").

The TUPE Regulations apply upon a transfer of undertaking (e.g. an asset sale) and provide that employees are entitled to transfer to the purchaser entity on the same terms and conditions of employment and with their continuity of employment intact. The TUPE Regulations do permit the termination of impacted individuals employment for economic, social or technological reasons, generally by way of redundancy. The TUPE Regulations also impose certain mandatory information and consultation obligations.

4. What, if any, is the minimum notice period to terminate employment?
Minimum statutory notice periods apply to all employees who have completed 13 weeks of continuous service with an employer. The duration of statutory notice required will depend on the length of service of the employee. Currently, the following minimum notice periods apply:

- For an employee who has worked for between 13 weeks and up to two years: one week's notice.
- For an employee who has worked for between two years and up to five years: two weeks' notice.
- For an employee who has worked for between five years and up to ten years: four weeks' notice.
- For an employee who has worked for between ten years and up to 15 years: six weeks' notice.
- For an employee who has worked for 15 years or more: eight weeks' notice.

The employment contract can provide for longer notice periods but cannot provide for periods shorter than the statutory minimum.

5. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?
Yes. When included in an employment contract, a PILON clause (pay in lieu of notice) provides an employer with the right to make a payment to an employee in lieu of the employee working for either some or all of the duration of the notice period. If not provided for as a matter of contract, a PILON provision may be agreed between the parties prior to and at the point of termination. However, if agreement is not reached, an employee is legally entitled to work out their notice period, and to challenge any purported termination that does not permit them to do so.

6. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?
Yes, the concept of garden leave does exist in Ireland and means in essence that the employee can be required to remain at home and not enter the workplace during a period of notice. Generally, the terms of the garden leave arrangement will provide that the employee should remain available in case the employer needs him or her for work related purposes. In order for an employer to avail itself of this provision, it must be captured contractually as part of the employment terms and conditions or agreed with an employee.

7. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, what are the requirements of that procedure or procedures?
Ideally, an employer would follow a fair procedure that is both transparent and readily available to employees. Employers are required as a matter of law to provide employees with the terms of any procedure that might result in dismissal (i.e. a disciplinary procedure) no later than 28 days after the entering into of a contract of employment.

The general principles of a fair procedure include, but are not limited to:

- an entitlement to be accompanied to meetings;
- access to documentary evidence pertaining to the dismissal;
- compliance with the principle of proportionality;
- confidentiality;
- affording employees an opportunity to respond to allegations against them.

Depending on the reason for the dismissal, there may be additional requirements as part of the procedure to ensure that the termination is effective. By way of example, a termination for poor performance will normally be preceded by an employer having placed an employee on a performance improvement plan, failure of which could ultimately lead to the invoking of a disciplinary procedure.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?
A failure to follow a full and fair procedure can result in an employee bringing a successful unfair dismissal claim (and or equality claim depending on the circumstances) against the employer. This in turn exposes the employer to the remedies available to an employee. The Workplace Relations Commission deals with claims of this type in Ireland and can provide remedies such as compensation of up to two years remuneration (gross) (limited to actual financial loss), reinstatement in the employee's old role or re-engagement for the employee into a new role in the employer entity. In circumstances where an employee can link the failure of the employer to provide a full and fair process to one of the nine protected discrimination grounds, thereby claiming discriminatory treatment by the employer, the employee could arguably obtain a compensatory award relating to said discriminatory treatment in addition to compensation for the termination itself.

In circumstances where an employee's reputation may be damaged as a result of the circumstances giving rise to his or her dismissal, an employee may seek to invoke constitutional entitlements to fair procedures in order to restrain his or her dismissal by way of injunction. Such an application is made to the High Court as part of a breach of contract/wrongful dismissal claim.

9. How, if at all, are collective agreements relevant to the termination of employment?
A collective agreement that covers the topic of termination and has agreed terms to that effect should be adhered to by an employer in order to avoid potential industrial action.

10. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?
No. However, consultation and notification requirements do exist in collective redundancy situations. Employees impacted by a collective redundancy must be consulted with 30 days prior to a termination taking effect and the Minister for Jobs, Enterprise and Innovation must also be informed (please see question 2 above). Employers are liable to a range of fines, depending on the breach for a failure to consult and notify. For example, in respect of a failure to notify the Minister, the employer may be liable to a maximum fine of €5,000.

11. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?
Irish equality legislation provides protection to employees from discrimination and harassment (in the context of said treatment and relating to a termination). There are nine protected discriminatory grounds, namely: age, gender, religious belief, civil status, sexual orientation, membership of the travelling community, family status, disability and race.

A termination that can be linked to any one of the nine discriminatory grounds will be considered unfair. The compensatory remedy available pursuant to the relevant equality legislation is compensation of up to two years gross remuneration. This compensation is not limited to actual financial loss on the part of the employee, unlike a compensatory award made pursuant to the unfair dismissals legislation.

12. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?
An employer could face a discrimination and/or discriminatory dismissal claim in this instance. This claim is initiated pursuant to the relevant equality legislation and is heard by the Workplace Relations Commission. Compensation is the most common form of remedy and can be up to two years gross remuneration.

In respect of an employee who has suffered harassment, in addition to a statutory harassment claim based on protected discriminatory grounds, it is also open to an employee so impacted to bring a personal injuries claim to the Irish High Court on the basis that the employee has suffered a psychological injury. Damages are generally the remedy awarded by this court and can be unlimited in their amount.

13. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

There are certain categories of employees entitled to specific protection on the termination of employment. Fixed term workers and part-time generally have the same rights as other employees, in that they are protected less favourable treatment on grounds of their work status (unless such treatment can be objectively justified). Employees on maternity leave have the added protection that if they are dismissed while on leave then such dismissal shall be considered void. Additionally, employees on adoptive leave and employees on paternity leave enjoy similar rights in relation to any purported termination of their employment.

Conversely, such protection does not extend to employees on parental leave or those on carer's leave. These employees can however, avail of a statutory provision which protects them from penalisation as a result of exercising their right to take this leave. An employer is prohibited from penalising an employee for exercising their entitlement to parental leave or force majeure leave. Penalisation includes, amongst other items, the dismissal of the employee. Although not as stringent as provisions rendering dismissals void, the prohibition of penalisation nonetheless goes a long way in safeguarding the rights of employees on this type of leave.

14. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Employees who have been unfairly dismissed on grounds of having made a protected disclosure may be awarded up to five years' salary or reinstatement/reengagement. Employees who claim that they have been dismissed for this reason may bring an unfair dismissal case without having completed one year's service with the employer (which is otherwise a statutory requirement for unfair dismissals cases).

Employees who can demonstrate that there are substantial grounds to contend that they have been dismissed as a result of having made a protected disclosure can apply to the Circuit Court for an injunction to restrain their dismissal (and to remain on payroll) pending the outcome of their underlying unfair dismissal claim.

15. What financial compensation is required under law or custom to terminate the employment relationship? How do employers usually decide how much compensation is to be paid?

In redundancy situations, an employee who has worked for an employer for a minimum of two years is entitled to a statutory redundancy payment calculated according to their length of service and rate of pay. The payment is two weeks' normal remuneration for every year of service plus an additional one week's normal remuneration, subject in each case to the statutory ceiling of €600 per week.

In the case of a mutually agreed exit that does not involve a redundancy, there is no set compensation payable by an employer as a matter of law. However, in order to ensure that an employee waives any and all employment claims he or she might have, employers are generally incentivised to offer an ex-gratia severance payment in exchange for a waiver of such claims. Depending on the particular circumstances of the exit, certain tax reliefs may apply.

Financial compensation for termination is usually assessed by reference to the potential compensation that an employee might receive in the event that they successfully challenge their dismissal. Compensation of up to two years gross remuneration is available in relation to an ordinary unfair dismissal claim, and up to five years in the case of a whistleblowing related unfair dismissal. Such compensation is based on actual loss and estimated future loss, and an employee is required to mitigate his or her loss.

By contrast, a discrimination dismissal claim can give rise to a compensation award of up to two years gross remuneration, but such compensation is based on the effect of the discrimination as opposed to actual loss. There is also no duty to mitigate such loss. As a consequence, discriminatory dismissal awards tend to be higher than ordinary unfair dismissal awards.

16. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply.

See above at question 15. Employers will often make an ex gratia payment in addition to the statutory redundancy lump sum (although there is no obligation to do so), subject to the employee signing a waiver of any/all claims arising from the termination of employment. Waivers can similarly be sought for the purpose of severance settlements. In each case, it is very important that the employer ensures that the employee received independent legal advice in relation to the waiving of his/rights.

17. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.
Yes. However, Irish courts are generally quite reluctant to enforce such restrictions unless they are satisfied that the employer has a legitimate interest to protect and the restriction does not go any further than is reasonably necessary to protect this interest. This is assessed by reference to the duration of the restriction, the geographical scope and the business to which it is stated to apply to. The employer must have legitimate reasons for seeking a restriction and such restriction should be as tailored as close as possible to the relevant employee's role to increase the employer's chances of being able to enforce the restriction.

18. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?
Yes, an employer can seek to do so as a matter of contract. A confidentiality clause is a type of restrictive covenant and must therefore be capable of being considered reasonable with regard to what it seeks to protect. Employers should specify, in clear and unambiguous terms, the type of information that that they are seeking to keep confidential.

19. Are employers obliged to provide references to new employers if these are requested?
Generally speaking, employers are not legally obliged to provide a reference but where a custom and practice exists in an organisation whereby employees are provided with references, it may be difficult for an employer to refuse to provide a reference. Where an employer decides to provide a reference, the employer will owe a duty of care to ensure that reasonable care is taken in relation to same and that its contents are fair, true and accurate. Data protection legislation considerations may also be relevant as employees may have a right to obtain copies of any reference created.

20. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?
It is our experience that employers often expect to initiate and conclude a termination process within a timeframe that is unrealistic having regard to the relevant Irish factors in this jurisdiction. Very often extra time is required in order to ensure that an employee is afforded the statutory protections they are entitled to in respect of the termination of their employment. This is most prevalent in performance based terminations.

In order to mitigate this particular difficulty, employers are advised to act promptly when it comes to identifying performance related issues. Furthermore, employers should be aware when creating timelines to deal with performance related issues that employees are entitled to improve on their performance over a reasonable period of time and that very often, lessor sanctions should be invoked prior to the sanction of termination.

Employers should always be live to the fact that a dismissal may be challenged by way of injunction and so should proceed with caution to ensure that this risk is minimised, if not eliminated.

21. Are any legal changes planned that are likely to impact on the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?
As of early 2017 there are no immediate legal changes planned that will have an impact on the termination of employment in Ireland.

However, the Irish Government is considering removing an employer's entitlement to set a mandatory retirement age. The current legislative position (in line with EU law) provides that when setting a mandatory retirement age, an employer must ensure the age can be objectively and reasonably justified by a legitimate aim and that the means of achieving that aim is appropriate and necessary. Recently, the Government has given consideration to the proposition of abolishing mandatory retirement ages in their entirety. Instead, employers would be permitted to initiate a practice whereby employees would be incentivised financially to take voluntary retirement at a certain age. However, the discussion of this topic is at a very early stage and it remains to be seen what type of changes will come about in relation to mandatory retirement ages.

At the very least, in order to deal with the issue of mandatory retirement ages in this jurisdiction currently, an employer should be well positioned to justify the reasons for the setting of a particular retirement age. ■