

Ten employment law tips

It is critical that firms of all sizes have an in-depth knowledge of employment law if they are to successfully navigate their way through the corporate jungle

It doesn't matter whether you employ five or 5,000 people, the same employment laws apply. Even though they are a vital part of any business, employees often get lost amid the day-to-day trials and tribulations of trying to stay afloat.

Unfortunately, the failure to comply with employment law obligations can be costly, whether that failure arises out of a breakdown in the employment relationship and ensuing litigation or is highlighted as a result of an inspection by the National Employment Rights Authority (Nera).

1. Contracts of employment

All employees must be provided with a written statement of their terms and conditions of employment.

On a very basic level, such statements must include:

- the full names of the employer and the employee
- the address of the employer
- the place of work
- details of the job
- the date of commencement
- details of the employee's remuneration, when and how it will be paid
- details of hours of work including breaks and overtime *terms or conditions relating to sickness absence and sick pay (if any)
- pension or PRSA details
- the period of notice which the employee is required to give and entitled to receive and
- a reference to any collective agreements which directly affect the employee.

More often than not such details are included in a written contract of employment which can also, if appropriate, contain provisions in relation to confidential information, uniforms, data protection, search, layoff etc.

2. HR policies

It is very important to design some basic human resources (HR) policies at the earliest opportunity.

To begin with, there is a statutory obligation on employers to provide employees with a copy of their disciplinary procedure within 28 days of the commencement of employment.

Employers should also draft and issue a grievance procedure (for dealing with employee complaints), a bullying and harassment procedure (for dealing with complaints specifically related to bullying or harassment on equality grounds) and, if necessary, an IT usage policy.

There is a code of practice which is used as a measure of best practice in relation to disciplinary issues. The code of practice makes certain recommendations in relation to disciplinary procedures as follows:

- details of any allegations or complaints must be put to the employee concerned
- the employee must be given the opportunity to respond fully to any such allegations or complaints
- the employee must be given the opportunity to be represented
- the employee has the right to a fair and impartial determination of the issues concerned and
- the employee must be allowed to confront or question witnesses.



Generally, the steps in the procedure will be progressive, for example: an oral warning, a written warning, a final written warning and dismissal.

3. Record working time

Employers have very strict obligations in relation to employees' working time. These obligations relate specifically to rest breaks, maximum weekly working time, night working, annual leave and public holidays.

All employees must be given a 15-minute rest break every 4.5 hours, 11 hours' consecutive rest every 24 hours and 24 hours' consecutive rest every 7 days. There is a mandatory 48-hour weekly working limit which applies with very limited exceptions.

Although it is honoured more in the breach than in compliance, employers have a statutory obligation to record their employees' working time.

This obligation extends to the number of hours worked by employees (excluding meals and rest breaks) on a daily and weekly basis; details of leave granted to employees in each week by way of annual leave or in respect of a public holiday and payment made in respect of that leave; and a weekly record of the starting and finishing times of employees.

The penalty for failing to comply with working time obligations can be up to two years' remuneration per employee.

4. Wages and salaries

The Payment of Wages Act, 1991, provides that every employee has the right to a readily negotiable mode of wage payment.

This means an employee must be paid by cheque, credit transfer etc. It also provides that all employees must be furnished with a written statement of wages and any deductions made.

While the minimum wage was briefly reduced by EUR 1 to EUR 7.65, it has again been restored to EUR 8.65 per hour. The vast majority of employees (including part time, casual and temporary) working under a contract of employment are entitled to this minimum wage.

There is no legal obligation on an employer to set up a pension scheme. An employer must however provide employees with access to a Personal Retirement Savings Account (PRSA).

5. Protective leave

* Maternity leave: female employees are entitled to 26 weeks' ordinary maternity leave and 16 weeks' additional maternity leave. Employees may be entitled to social welfare maternity benefit during their ordinary maternity leave, but there is no obligation on an employer to continue payment of an employee's salary during any period of additional maternity leave.

Employees are however entitled to paid time off for antenatal care and classes and postnatal medical care.

* Parental leave: both male and female employees are entitled to take up to 14 weeks' unpaid leave from their work in order to take care of young children.

* Force majeure leave: there is a limited entitlement to paid time off to deal with the illness or injury of specified persons. It is really only for emergencies.



6. Fixed term and part-time employees

It is important to bear in mind that fixed term and part-time employees cannot be treated less favourably than comparable permanent or fulltime employees.

7. Employment equality

Discrimination in employment is prohibited on nine distinct grounds: gender, age, race, religion, marital status, family status, sexual orientation, disability and membership of the Travelling community.

In general terms discrimination is prohibited in relation to job advertisements; access to employment, terms and conditions of employment, training and promotion.

The definition of disability, in particular, is extremely broad and the obligation on employers is to accommodate employees with disabilities unless the cost to do so would be disproportionate.

8. Safety

Employers have a statutory and common law obligation to ensure, as far as is reasonably practicable, the safety, health and welfare at work of their employees.

An employer must exercise all due care by implementing the necessary protective and preventative measures, having identified the hazard and assessed the risks to safety and health likely to result in accidents or injury to health at the place of work.

9. Data protection

Compliance with data protection law is an important matter for all employers. Data protection law stipulates that anyone who holds data relating to an individual must comply with certain rules such as obtaining and processing the data fairly, and keeping it accurate and up to date.

From an employment perspective this means that employees have the right to request access to their personnel files, working time records, disciplinary and performance records etc.

10. Termination of employment

Employees in Ireland are protected from dismissal by virtue of our unfair dismissals legislation which applies, subject to certain exceptions, to most employees with over one year's service. What our unfair dismissals legislation says, in very basic terms, is that most dismissals are automatically unfair and it is up to an employer to prove that they are fair on both procedural and substantive grounds.

The best way to ensure procedural fairness in dismissing an employee on grounds of conduct, competence or capability is to follow a disciplinary procedure which complies with the code of practice referred to.

Substantive fairness essentially means that the punishment at the end of the disciplinary procedure must be appropriate.

Melanie Crowley is a partner in the employment law and benefits unit with Mason Hayes + Curran.

This article appeared in the Sunday Business Post on 22nd May 2011.