Employees (Provision of Information and Consultation) Act 2006

Although passed some time ago, the Employees (Provision of Information and Consultation) Act 2006 has really only started to make a difference for employers since 4 September 2006.

This Act was initially expected to be one of the most important innovations in Irish employment relations this century but its counterpart in the UK has been described as somewhat of a damp squib.

The Act imposes information and consultation obligations on employers and is being introduced on a phased basis. Since 4 September 2006, the Act applies to all employers with at least 150 employees. From 23 March 2007 the Act will apply to employers with over 100 employees and from 23 March 2008 to employers with at least 50 employees.

The Act is extremely wide ranging and covers any “public or private undertaking carrying out an economic activity, whether or not operating for gain...”. As such, it applies to all companies, partnerships, charitable organizations, trade unions and public bodies.

In short, the Act requires employers who meet the requisite threshold to provide employees with information on developments (recent & future) affecting the economic situation and activities of the business. It also requires employers to inform and consult employees on developments affecting employment in the workplace and, in particular, on decisions likely to lead to substantial changes in work organisation or in contractual relations. In this regard, the Act specifically refers to proposed or anticipated business acquisitions and collective redundancies. This could mean, on a very basic level, that employers find themselves discussing acquisitions, disposals, restructurings, re-organisations, mergers and even recruitment strategies with employees prior to the actual event or decision being made.

The Act does however provide that employers may refuse to communicate information or undertake consultation where such information and/or consultation would seriously harm the functioning of the employer’s business or be prejudicial to the employer’s business. However, this exception should be used only where absolutely necessary lest employers be seen to be holding back from employees.

Some employers have wisely already taken the initiative to put in place information and consultation arrangements before the Act applies to them. These are usually referred to as “pre-existing arrangements”. Employers who put arrangements in place prior to the Act becoming applicable had and have, subject to some minimum conditions, more control over the process and manner in which information and consultation is provided to and undertaken with employees.

In general, once the Act applies to an employer and the employer refuses to negotiate an agreement or where an information and consultation agreement cannot be reached within six months of commencing negotiations (which can be extended by agreement), the default Standard Rules set out in the Act will apply to that workplace. Alternatively, the parties may agree to adopt the Standard Rules in their workplace. The Standard Rules are not tailored to a particular workplace and, therefore, may be more difficult than a pre-existing agreement or a negotiated agreement to operate in practice.
The Standard Rules set out in Schedule 1 give some general guidelines of the Act containing provisions in relation to the size and structure of the information and consultation forum, the rules of procedure and then set out the matters on which employees should be informed and consulted. These include:

- information on the recent and probable development of the employer’s activities and economic situation;
- information and consultation on the situation, structure and probable development of employment and any anticipatory measures envisaged, in particular where there is a threat to employment; and
- information and consultation on decisions likely to lead to substantial changes in work organization or in contractual relations.

The Act provides that information and consultation can take place with employees directly or through an appointed or elected employee representative. It also contains provisions for the protection of employee representatives from penalization by an employer for performing their information and consultation duties and functions. A rights commissioner can award up to two years’ remuneration as compensation (not limited to financial loss) to an employee who has been penalized because of his/her role as an employee representative.

The Act contains provisions in relation to confidential information. It provides that an employee in receipt of information which is expressed, by the employer, to be confidential must not disclose such information to other employees or third parties. Interestingly, the Act does not contain any provisions for penalties or other sanctions to be imposed on employees or employee representative who breach the confidentiality provisions. In circumstances where such breaches occur, it would be up to an employer to use his normal disciplinary procedure to deal with any breaches of confidentiality.

**So why the reference to damp squib?**

Even where an employer comes within the scope of the Act by virtue of the number of employees threshold, the obligations under the Act will only apply where a written request is made by 10% of employees (but not less than 15 or more than 100 employees) to the employer or to the Labour Court to enter into negotiations to establish information and consultation arrangements. This requirement for employees to mobilize themselves has proved to be a distinct disincentive for employees in the UK.

While it remains to be seen whether large numbers of employees will request employers to establish information and consultation procedures in their workplaces, employees’ involvement in their employer’s business will, as a result of this legislation, become a growing feature of carrying out business in Ireland.

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