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1. SOURCES OF EMPLOYMENT LAW
1.1 What are the principal sources of law and regulation?
The sources of employment law in Ireland are European Union law, statutes, common law, equity and the Irish Constitution. Statutes are the most significant source, particularly given the considerable amount of employment legislation that is driven by Ireland’s membership of the European Union.

Decisions and judgments of Irish courts and, in some instances, tribunals, form precedents which are usually followed pursuant to the principle of stare decisis. Judgments of courts in the United Kingdom have persuasive authority and, in practice, are widely followed. In addition, judgments of the European Court of Justice, which are supreme over judgments of the Irish courts, are hugely influential on employment law in Ireland.

The Irish Constitution (Bunreacht na hÉireann, 1937) is also central to the rights of employees, especially in matters of discipline and dismissal. Irish courts have held that the fundamental principles of natural justice apply to the employment relationship and that employees’ rights to fair procedures are enshrined in the constitution. Therefore, the impact of the constitution must also be considered when reviewing employment law matters in Ireland.

1.2 What is the order of priority of the relevant sources – ie, which take precedence in the event of a conflict?
European Union law is supreme in Ireland and takes precedence over other sources of law in the event of a conflict.

1.3 What are the relevant statutes and international treaties?
The main employment statutes in Ireland are:
• the Redundancy Payments Acts 1967-2007;
• the Terms of Employment (Information) Acts 1994-2001;
• the Payment of Wages Act 1991;
• the Unfair Dismissals Acts 1977-2007;
• the National Minimum Wage Act 2000;
• the Organisation of Working Time Act 1997;
• the Employment Equality Acts 1998-2011;
• the Maternity Protection Acts 1994-2004;
• the Adoptive Leave Acts 1995-2005;
• the Parental Leave Acts 1998-2006;
• the Carer’s Leave Act 2001;
• the Protection of Young Persons (Employment) Act 1996;
• the Protection of Employees (Part-Time Work) Act 2001;
• the Protection of Employees (Fixed-Term Work) Act 2003;
• the Data Protection Acts 1988-2003;
• the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003;
• the Employees (Provision of Information and Consultation) Act 2006;
• the Transnational Information and Consultation of Employees Act 1996;
• the Employment Permit Acts 2003 and 2006; and

Important international treaties include the EC Treaty, the Treaty of Amsterdam, the European Convention on Human Rights, the Convention on the Law Applicable to Contractual Obligations (Rome Convention) and the Rome I Regulation (Regulation 593/2008).

2. PRINCIPAL INSTITUTIONS

There are a number of important employment law institutions in Ireland. Some of the main institutions include the following:

Labour Relations Commission (LRC)

The LRC was established to promote industrial relations and works in conjunction with trade unions, joint industrial councils, joint labour committees and business associations (such as the Irish Business and Employers Confederation). Amongst the services it offers, the LRC provides a conciliation service and it also provides the Rights Commissioner service outlined below.

Rights Commissioners

Rights Commissioners are appointed by the Minister for Jobs, Enterprise and Innovation to deal with certain trade and employment law disputes. A complaint to a Rights Commissioner is often the first avenue of redress pursued by a complainant.

Labour Court
The Labour Court has jurisdiction at first instance and on appeal in a number of employment law and industrial relations matters.

Employment Appeals Tribunal (EAT)
The EAT has jurisdiction to hear certain employment law disputes, both at first instance and on appeal, most notably unfair dismissal claims.

Equality Tribunal
The Equality Tribunal has jurisdiction over matters concerning the Employment Equality Acts 1998-2011. Disputes can be mediated but if mediation is either rejected or is unsuccessful, then the dispute will be heard by an equality officer nominated by the Equality Tribunal.

Health and Safety Authority (HSA)
The HSA is responsible for monitoring compliance with occupational health and safety legislation, to include the prevention of bullying and harassment, and conducting prosecutions in the event of breaches.

National Employment Rights Authority (NERA)
NERA aims to increase the level of monitoring and compliance with employment rights in Ireland. Its main functions are to provide information; carry out inspections of workplaces; enforce employment rights legislation; prosecute offenders and protect young persons who are working.
NERA was set up under the auspices of the Department of Jobs, Enterprise and Innovation. Its establishment was agreed as part of the social partnership agreement, ‘Towards 2016’, and the Employment Law Compliance Bill 2008 (discussed later in this chapter) is intended to place NERA on a statutory footing.

3. ROLE OF THE NATIONAL COURTS
In addition to the institutions noted above, the civil courts of Ireland have
jurisdiction in employment matters. They hear common law actions, such as claims for wrongful dismissal and breach of contract and can provide redress in equity such as injunctive relief. The courts often have jurisdiction under statute to hear appeals from the above-mentioned institutions, usually on a point of law. The Circuit and High Courts are the most common forum for employment law disputes, though the District Court may hear enforcement proceedings (such as under section 20, Protection of Young Persons (Employment) Act 1996) and the Supreme Court retains its jurisdiction as the national court of final instance.

4. EMPLOYMENT STATUS AND CATEGORIES OF WORKER

4.1 What defines employment status (ie, whether an individual is employed or self employed)?

There is a distinction in law between employees and independent contractors. This distinction is very important as only employees are protected by employment law. An employee works under a contract of service for an employer, under which he or she contracts to provide his or her own labour, skill and services in return for remuneration. An independent contractor, meanwhile, works under a contract for services, and provides his or her labour on a self-employed basis in return for remuneration.

4.2 What is the relevance of the distinction?

The classification of a contract as one of service or for services is not always clear. It is a question of substance which is not decided by the labels used by the parties to describe the relationship (See Henry Denny & Sons (Ireland) Limited v Minister for Social Welfare [1998] ELR 36). Some principal features of the employer/employee relationship as found by the courts are the following:

- the employer exercises a sufficient degree of control over the worker;
- the worker must perform the contract personally and cannot delegate to another;
- the worker is an integral part of the workforce; and
- income tax (PAYE) and Pay Related Social Insurance (PRSI) are deducted from the worker’s remuneration by the employer.

In contrast, factors which suggest that the worker is an independent contractor include:

- the worker is in business on his or her own account and the profits are determined by the manner in which he or she carries out the work;
- the worker is not subject to PAYE/PRSI and is responsible for his or her own taxes;
- the worker is not under the direct control of the other party to the contract; and
- the worker has no fixed working hours.

The distinction is also relevant for taxation. Different rates of PRSI apply to employees and contractors and there is different tax treatment for both. Employees are taxed by the Pay As You Earn (PAYE) system in accordance with Schedule E of the Taxes Consolidation Act 1997. Self-employed workers
are taxed under Schedule D and are responsible under the self-assessment system for accounting for their taxes. Furthermore, contractors may be required to charge VAT for services rendered.

4.3 What are the main categories of worker?
The majority of employees in Ireland are employed pursuant to full-time employment contracts of indefinite duration. There are, however, certain other categories of employees that require special consideration. These include the following:

Fixed-term and specified purpose employees
A contract may be for a fixed term or specified purpose (eg, to cover maternity leave). The provisions of the Protection of Employees (Fixed-Term Work) Act 2003, which implemented Directive 99/70/EC concerning the framework agreement on fixed-term work, provide that fixed-term/specified-purpose workers shall not be treated less favourably than comparable permanent workers solely because they have a fixed-term or specified purpose contract, unless different treatment is justified on objective grounds. The 2003 Act also seeks to prevent abuse arising from the use of successive fixed term employment contracts by providing for a maximum of four years' employment under two or more fixed-term contracts without the employee being made permanent, unless objective reasons are given for a longer period.

Part-time employees
Employment may be on a full-time or part-time basis. The employment of part-time employees is governed by the Protection of Employees (Part-Time Work) Act 2001. This Act essentially provides that part-time employees shall not be treated in a less favourable manner than a comparable full-time employee in respect of their conditions of employment.

Zero-hours contracts
A zero-hours contract is one under which the employee works as and when required by the employer without a guarantee of any work being available. In the event that an employee is not required to work at least 25 per cent of his or her contract hours or 25 per cent of the time for which he or she must be available to work, the zero hours provisions of the Organisation of Working Time Act 1997 ensure that the employee is compensated for the lesser of either: (i) 25 per cent of the time which he or she is required to be available; or (ii) 15 hours.

Agency workers
Agency workers are contracted by employment agencies to perform work for a third-party client. Under most Irish employment legislation, agency workers are considered as being employed by that entity which pays their remuneration (ie, the agency), but for the purposes of the Unfair Dismissals Acts 1977-2007 the employer is considered to be the end user of the labour (ie, the client). There is, however, some case law which creates confusion...
over who should be considered the employer for the purpose of employment legislation. The recently enacted Directive 2008/104/EC on temporary agency work aims to provide further protection to agency workers once it is transposed into Irish law and will hopefully also clarify certain issues relating to agency workers.

**Young persons**

The employment of young persons is governed by the Protection of Young Persons (Employment) Act 1996, which implements Directive 94/33/EC on the protection of young people at work (other than Articles 6 and 7). The 1996 Act defines ‘young persons’ as persons who have reached the age of 16 years, but have not reached the age of 18 years and aims to protect the health and education of young workers by setting out maximum working hours, rest intervals, age limits for employment and record-keeping requirements for employers of young persons.

**Non-nationals**

Non-EEA or Swiss nationals require permission to work in Ireland. The Employment Permits Acts 2003-2006 make it an offence to employ or be employed in the jurisdiction in the absence of such permission.

**4.4 What is the position of directors?**

Directors who are also company employees are known as ‘executive directors’. Employment law applies to executive directors only and not to ‘non-executive’ directors.

**5. CONTRACT**

**5.1 What constitutes an employment contract?**

An employment contract sets out the terms under which an employee is employed. It can be written or oral and it can be made up of express and implied terms.

**5.2 What formal requirements are there in relation to the formation of an individual employment contract?**

The formal requirements for the formation of employment contracts are the same as for all contracts: ie, offer, acceptance, consideration and an intention to create legal relations. Employment contracts may be express or implied, oral or written. Parties to employment contracts, however, do not have the same freedom to agree their terms and conditions as parties to other agreements may have. Certain terms may be implied into employment contracts in addition to those expressly agreed between the parties, usually with a view to protecting the employee. Terms may be implied by the following mechanisms:

**Statute**

There are a number of statutes which imply terms into employment contracts. Examples include wages, minimum holiday entitlements,
minimum rest periods, acceptable forms of payment of wages and the right to payment on redundancy.

**Collective agreements**
The terms of any collective agreement in place between an employer and a trade union may be incorporated into individual employment contracts.

**Custom and practice**
Terms may be implied into a contract by custom and practice. For this to happen, terms must be equitable, necessary, clear and obvious and must not contradict the express terms of the contract (see *DP Refinery (Westernport) Pty Ltd v Shire Hastings* (1978) 52 AJLR 43). A court may be more willing to imply such terms to a contract if necessary for business efficacy.

5.3 **Where do the terms come from?**
Terms come from all sources of law, including European Union law, the constitution, statute and common law.

6. **TERMS AND CONDITIONS**

6.1 **What terms, if any, must be included in a contract?**
Although there is no legal requirement to provide employees with a written contract of employment, the Terms of Employment (Information) Acts 1994-2001 requires employers to provide employees with the following minimum terms and conditions in writing within two months of the commencement of their employment:

- full names of employer and employee;
- address of employer/principal place of business or registered office;
- place of work;
- job title and nature of work;
- date of commencement of contract;
- expected duration of temporary contract or date on which a fixed-term contract will expire;
- rate or method of calculation of remuneration;
- pay intervals, eg, weekly/monthly;
- hours of work including overtime;
- paid leave (other than paid sick leave);
- pensions and incapacity benefit due to sickness or injury;
- notice periods;
- reference to any collective agreements;
- details of minimum statutory rest breaks (as provided for in sections 11, 12 and 13 of the Organisation of Working Time Act 1997; and
- reference to the employee’s right to make a request for a statement of his or her hourly rate of pay as provided for in section 23 of the National Minimum Wage Act 2000.

Details of any changes to terms and conditions must be in writing and given no later than one month after the change takes effect. Further, where an employee is required to work outside Ireland for a period of at least one month,
prior to departure the employee must be furnished with a written statement of
terms and conditions which will apply for the period spent abroad.

6.2 What terms are typically included in a contract?
In addition to the statutory terms and conditions which must be provided
to employees under the Terms of Employment (Information) Acts 1994-
2001, the following are examples of clauses which are often included in Irish
employment contracts to provide further protection to employers:
• notification and medical certification requirements (to deal with absence
through illness or injury);
• probationary periods (usually set between three to six months with an
option for the employer to extend the probationary period);
• garden leave;
• pay in lieu of notice;
• confidential information;
• lay-off/short time;
• search (an employer may not lawfully search an employee's person
or property without the employee's consent – it is common to have
such a clause in employment contracts, particularly in manufacturing
companies);
• exclusivity of service;
• additional benefits;
• retirement age;
• restrictive covenants (such provisions are usually only contained in the
employment contracts of senior employees or those whose roles involve
building and/or maintaining relationships with clients and customers.
Employers must ensure that these restrictions are reasonable and do not
go further than what is necessary to protect the business. Otherwise,
they may be unenforceable);
• intellectual property;
• share options;
• email, intranet and internet usage (this should refer to an employer
reserving the right to monitor employee communications);
• resignation of directorships/offices on termination of employment; and
• data protection.

In terms of minimum pay, the National Minimum Wage Act 2000
provides for a national minimum wage in Ireland. The current minimum
wage in Ireland is €8.65 per hour although there are certain lower rates for
employees under the age of 18, trainees and for those in their first two years
of employment after entering employment or attaining the age of 18 years.

Employment regulations orders (which are currently unenforceable
due to a recent High Court decision – see John Grace Fried Chicken Ltd v
The Catering Joint Labour Committee [2011] IEHC 277 (unreported)) used
to apply to a number of industry sectors. In this case, it was held that the
provisions of the Industrial Relations Acts 1946-2004, which set out the basis
for the making of such orders, are unconstitutional. The Minister for Jobs,
Enterprise and Innovation is currently reviewing proposals to replace the
previous JLC system under which employment regulation orders were made with a new JLC system which is compatible with the constitution. Registered employment agreements, which apply to employees in certain sectors and which are currently lawful although subject to a separate court challenge, may provide for binding rates of pay and conditions of employment in excess of those set out in mandatory employment legislation.

6.3 What rules apply to:

6.3.1 Working time and rest breaks?
The Organisation of Working Time Act 1997 (the 1997 Act) stipulates minimum terms and conditions relating to rest breaks, maximum weekly working time, night working, annual leave and public holidays. The 1997 Act provides that all employees must be given a 15 minute rest break after 4.5 hours’ work and a 30 minute break after six hours’ work (which may include the earlier 15 minute break). It also provides for 11 hours’ consecutive rest every 24 hours, and 24 hours’ consecutive rest every seven days. There is a mandatory 48-hour weekly working limit which applies to all employees and which is averaged out over a reference period (usually four months).

6.3.2 Annual leave?
The 1997 Act also provides that all employees who work at least 1,365 hours in a leave year shall be entitled to a minimum of four working weeks’ holiday in that leave year. If an employee works less than 1,365 hours, they shall be entitled to one-third of a working week’s holiday for every month in which that employee works over 117 hours. Where the hours worked by an employee are less than 117 per month, he or she shall be entitled to eight per cent of the hours worked in the leave year as annual leave (subject to a maximum of four working weeks). In addition, employees are entitled to nine public holidays per year. An employer is not obliged to give the day off (although it can if it so chooses) and may instead offer a paid day off within a month of that public holiday, an extra day’s pay or an extra day’s annual leave. The nine public holidays are:

- the first day of January;
- St Patrick’s day (17th March);
- Easter Monday;
- the first Monday in May;
- the first Monday in June;
- the first Monday in August;
- the last Monday in October;
- Christmas day; and
- St Stephen’s day (26th December).

The Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations 2001 (SI 473/2001), require employers to keep records of the number of hours worked by employees (excluding meals and rest breaks) on a daily and weekly basis, leave granted to employees in each week by way of annual leave or in respect of a public holiday, payment made in respect of that leave, as well as a weekly record of the starting and
finishing times of employees. Employers should keep these records for at least three years. The 2001 Regulations also require that an employer keep a record of the name, address, PPS number and job description of each employee and a copy of the statement of terms and conditions of employment provided to each employee under the provisions of the Terms of Employment (Information) Acts 1994-2001.

7. EMPLOYEE REPRESENTATION

There is a constitutional right in Ireland to join or dissociate from trade unions (Article 40.6.1° as interpreted by the Supreme Court), although there is no mandatory recognition of trade unions by employers. Trade unions are regulated by the Trade Union Acts 1941-1976 and the Industrial Relations Acts 1946-2004. Under those Acts, ‘excepted bodies’ who hold a negotiation licence (usually trade unions) may negotiate the fixing of wages and terms and conditions of their members. In order to obtain such a licence, a trade union must have at least 1,000 members in Ireland in the 18-month period preceding the licence application and deposit a specified sum, depending on the number of members of the union. Larger trade unions are favoured over a proliferation of small trade unions, and grants are available from the Minister for Jobs, Enterprise and Innovation towards expenses incurred by trade unions in a merger. Trade union subscriptions are normally deducted from an employee’s wages, provided that the employee has given prior written authorisation to the employer.

In addition to negotiating collective agreements with employers, trade unions also have a role in the event of strike action by their members, which is governed by the Industrial Relations Acts 1946-2004.

There are certain circumstances when it is necessary to establish employee representative fora and to inform and consult employee representatives. Some of the main instances are as follows:

**European Works Councils**

Under the Transnational Information and Consultation of Employees Act 1996 there may be a requirement for a community scale undertaking (CSU) or a community scale group of undertakings (CSGU) which meets the required thresholds to establish a European Employees Forum or other information and consultation procedure. Employees from CSUs or CSGUs in the various member states would participate in such a procedure.

For a CSU the threshold is:
- an undertaking with a total of at least 1,000 employees in the member states; and
- at least 150 employees in each of at least two member states.

For a CSGU the threshold is:
- an undertaking with at least 1,000 employees within the member states;
- at least one group undertaking with at least 150 employees in one member state; and
- at least one other group undertaking with at least 150 employees in another member state.
Provided the thresholds are met then it is the responsibility of the central management of the CSU or CSGU to create the conditions and means necessary for the setting up of an arrangement for the information and consultation of employees. If, and when, this occurs there are certain technical procedures contained in the 1996 Act in relation to the election of employee representatives.

8. INFORMATION AND CONSULTATION

Information and consultation in a collective redundancy situation

The procedure for large-scale redundancies is laid down by the Protection of Employment Acts 1977-2007. These Acts set out certain procedural requirements which an employer must follow in the event of a collective redundancy situation. Further details relating to collective redundancies are set out later in this chapter.

The Protection of Employment Acts 1977-2007 provide that in a collective redundancy situation, an employer must initiate consultations with employee representatives ‘with a view to reaching agreement’. The definition of the word ‘representatives’ not only includes a ‘trade union, staff association or excepted body with which it has been the practice of the employer to conduct collective bargaining negotiations’ but has been extended to provide that ‘in the absence of such a trade union, staff association or excepted body, a person or persons chosen (under an arrangement put in place by the employer) by such employees from among their number to represent them in negotiations with the employer.’

Consultation should take place ‘at the earliest opportunity and in any event at least 30 days before the first notice of dismissal is given’. The subject matter of the consultation should include the possibility of avoiding the proposed redundancies by reducing the number of employees to be dismissed and the basis on which particular employees are to be made redundant.

Information and consultation in a transfer of undertakings situation

Another instance in which employee representatives become relevant is when there is a transfer of business from one undertaking to another. The European Communities (Protection of Employees’ Rights on Transfer of Undertakings) Regulations 2003 (SI 131/2003) provide that employees attaching to a business which is being transferred must transfer with the business to a new employer, along with their accrued years of service, existing terms and conditions of employment and the benefit of any collective agreement to which they may already be subject. Where the business preserves its autonomy after the transfer, the representatives of the employees shall remain in place as before.

Both the transferor and transferee of the business must inform their respective employees’ representatives affected by the transfer of:

- the date or proposed date of the transfer;
- the reasons for the transfer;
- the legal, economic and social implications; and
- the measures envisaged in relation to employees.
As in a collective redundancy situation, where there are no employee representatives in an organisation, there is an obligation on the transferor or transferee to put in place a procedure whereby the employees may elect a person or persons from among their number to represent them in any consultations.

9. **EQUAL OPPORTUNITIES**

9.1 *What protection do employees have from discrimination?*


In general terms, discrimination is prohibited in relation to access to employment, conditions of employment, training, promotion, re-grading and classification of posts.

9.2 *What rights do parents have?*

There are further protections available to employees who are parents. The Maternity Protection Acts 1994-2004 protect an employee’s right to return to work, either to the job she was doing before the commencement of maternity leave or, if that is not reasonably practicable, to a suitable alternative position. They also provide that an employee is entitled to 26 weeks’ ordinary maternity leave, together with an additional 16 weeks’ additional maternity leave. While there is no obligation on an employer to continue paying an employee’s salary during ordinary or additional maternity leave, employees may be entitled to collect social welfare maternity benefit during their ordinary maternity leave. Further rights granted by the Maternity Protection Acts 1994-2004 include:

- the right to continue to accrue all entitlements associated with employment (with the exception of remuneration), including annual leave and public holiday entitlements;
- the right to attend a complete set of antenatal classes without loss of pay (with the exception of the last three classes in a set). Employed fathers have a one-off right to paid time off to attend two ante-natal classes;
- the right to paid leave for ante- and post-natal medical care;
- the right to terminate additional maternity leave in case of illness of the mother and an option to split the period of maternity leave in case of hospitalisation of the child, subject to the agreement of the employer; and
- the right to an adjustment of working hours or breaks for breast-feeding mothers (for a limited period).

An adopting female employee (or a sole male adopter) is entitled to a minimum of 24 weeks’ unpaid adoptive leave under the Adoptive Leave Acts 1995 and 2005, commencing when the child is physically placed in the care of the adopting parent. Employees may be entitled to collect social welfare during this 24-week period. Adoptive leave may be extended upon application for a further period of up to a maximum of 16 weeks. Employees
are also entitled to paid time off work to attend pre-adoption classes.

Furthermore, the Parental Leave Acts 1998 and 2006 give the natural or adoptive parent of a child (or a person acting *in loco parentis*) the right to 14 weeks’ unpaid leave to take care of the child. This entitlement applies until the child reaches eight years of age, with special provisions in the case of adopted children and children with a disability. In order to avail of the full 14 weeks’ leave, an employee must have one year's continuous employment with the employer. Where an employee has not accumulated the requisite period of service and the time within which the parental leave can be taken is due to expire, they may be entitled to take a specified portion of the parental leave.

The Parental Leave Acts 1998 and 2006 further entitle employees to paid force majeure leave to deal with an emergency situation concerning:
- a person of whom the employee is the parent or adoptive parent;
- the spouse of the employee or a person with whom the employee is living as husband or wife;
- a person to whom the employee is *in loco parentis*;
- a brother or sister of the employee;
- a parent or grandparent of the employee; or
- a person other than one specified above, who resides with the employee in a relationship of domestic dependency. A person who resides with an employee is taken to be in a relationship of domestic dependency with the employee if, in the event of injury or illness, one reasonably relies on the other to make arrangements for the provision of care. The sexual orientation of the persons concerned is immaterial.

*Force majeure* leave arises where, for urgent family reasons owing to an injury to or the illness of one of the persons listed above, an employee’s immediate presence where that person is, whether at his or her home or elsewhere, is indispensable. Leave of up to three days in any period of 12 consecutive months or five days in any period of 36 consecutive months may be taken.

The Carer’s Leave Act 2001, as amended by the Social Welfare Law Reform and Pensions Act 2006, entitles approved carers to unpaid leave of up to 104 weeks, which must be facilitated by the employer. Carer’s leave may be taken to provide full time care to a ‘relevant person’, being a person who has a disability and requires full time care and attention.

An employee must have 12 months’ continuous service with the employer in order to be entitled to take carer’s leave and must apply for a decision from a deciding officer at the Department of Social Protection to the effect that the person who is to be the recipient of the care is a relevant person. The employee is not entitled to take carer’s leave until the employer has been given a copy of such decision. The employer must then hold the employee’s job open until the end of the care period.

10. **DISCIPLINE AND TERMINATION**

10.1 What rules/procedures must be followed if an employer wishes to discipline an employee?

An employer must afford an employee his or her constitutional right to
natural justice and fair procedures when disciplining him or her. Therefore, a fair process must be followed. Further, this process should take account of the Irish Code of Practice on Grievance and Disciplinary Procedures.

10.2 What disciplinary action may be taken?
The Irish Code of Practice on Grievance and Disciplinary Procedures provides for the following types of sanctions: warnings (verbal and written), suspension without pay, demotion, transfer to another task or section of the enterprise, other disciplinary action short of dismissal and dismissal.

10.3 What are the grounds on which employment contracts can be terminated (by both employer and employee)?
An employer who wishes to discipline an employee or to terminate an employment contract must be aware at all times of the overarching requirement of fairness. Employees who have had their contracts terminated may allege that their dismissal is unlawful and claim either wrongful or unfair dismissal.

An action for wrongful dismissal is essentially an action for breach of contract and is brought before the civil courts at common law. The onus of proof in a wrongful dismissal action is on the employee.

A claim for unfair dismissal, however, is brought under the Unfair Dismissals Acts 1977-2007, which deem all dismissals to be prima facie unfair. With the exception of constructive dismissal claims, the onus is placed on the employer to prove, on the balance of probability, that there were substantial grounds and justified reasons for the dismissal and that the dismissal was procedurally fair. Circumstances where a dismissal may be deemed to be fair include a dismissal based on the capability, competence or qualifications of the employee, the conduct of the employee and in a redundancy situation.

Dismissals are automatically deemed to be unfair, however, if they are based on the following reasons:
• membership of a trade union;
• religious or political opinion;
• the fact that an employee is involved in civil or criminal proceedings against the employer;
• race, colour or sexual orientation;
• the exercise of rights under the maternity, adoptive, parental or carer’s leave legislation;
• age;
• membership of the travelling community; or
• pregnancy or matters connected therewith.

In addition to the requirement that the reason for the dismissal be fair, the procedures followed in a dismissal must also be fair if a finding of unfair dismissal is to be avoided. Employers in Ireland are required by law to provide employees with a copy of their dismissal procedure (more commonly referred to as the disciplinary procedure) within 28 days of the commencement of employment. This procedure should take account of the
I Irish Code of Practice on Grievance and Disciplinary Procedures which is mentioned above at 10.1. Although this code of practice is not mandatory, it is used as a benchmark for best practice by the courts, Rights Commissioners and the Employment Appeals Tribunal.

Claims for unfair dismissal are heard before a Rights Commissioner or the Employment Appeals Tribunal. In order to gain the protection of this legislation, an employee must:

- have at least one year’s continuous service (though this is not necessary where an employee is dismissed because of trade union membership, pregnancy or related matters, the exercise of rights to maternity leave, adoptive leave, parental leave or carers leave and the exercise of rights under the National Minimum Wage Act 2000);
- be aged between 16 and the normal retiring age for employees of that employer; and
- have notified his or her claim in writing to either the EAT or a Rights Commissioner within six months of the date of dismissal (or 12 months in exceptional circumstances).

Employees can also take a claim under the Unfair Dismissals Acts 1977-2007 where they feel that they have been constructively dismissed. Constructive dismissal occurs when an employee terminates his or her employment because of the employer’s conduct.

There are three principal remedies available under the Acts: re-instatement, re-engagement or compensation. Compensation is the most common remedy. The maximum compensation available is an amount equal to 104 weeks of the employee’s remuneration, though the amount of compensation awarded should be limited to the actual financial loss suffered by the employee and is subject to the employee’s duty to mitigate his or her loss.

Redundancy

The Redundancy Payments Acts 1967-2007 regulate the area of redundancy and specify the circumstances in which an employee may be made redundant. Again, it is important that there is not only a genuine reason for redundancy but that fair selection procedures are followed in determining which employee(s) should be made redundant. Further, a fair process must be followed and this usually involves some form of consultation and consideration of any alternatives to redundancy.

An employee may be entitled to a statutory redundancy payment if that employee has worked under a contract of service or apprenticeship, has been continuously employed for a period in excess of 104 weeks and is aged over 16 years. An employee who fulfils these criteria is entitled to a tax-free lump sum payment from the employer. The amount of the payment relates to the employee’s length of service and their normal earnings up to a maximum fixed rate, which is currently €600 per week. This lump sum payment is calculated as follows:

- two weeks’ pay for every year of service; plus
- a bonus of one week’s pay.

Employers making lump sum payments to employees on redundancy
could previously obtain a rebate of up to 60 per cent of the statutory redundancy payment from the Department of Jobs, Enterprise and Innovation. This rebate was reduced to 15 per cent with effect from 1 January 2012.

It is common in Ireland for employers to pay *ex-gratia* or enhanced redundancy payments to employees over and above the statutory minimum. However, in the absence of a binding agreement or precedent to make such a payment, there is no legal obligation on employers to do so.

### 10.4 What procedure must be followed?

Please see the answers to 10.1 and 10.3 above.

Other than in a summary dismissal situation, an employee must be given notice in order to terminate his or her employment. An employee’s notice period will usually be specified in the employment contract, though the Minimum Notice and Terms of Employment Acts 197-2005 provide the statutory minimum notice period to which an employee is entitled. The length of notice required under this legislation depends on the length of the employee’s service and is calculated as follows:

<table>
<thead>
<tr>
<th>Less than two years’ service:</th>
<th>one week</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-5 years’ service:</td>
<td>two weeks</td>
</tr>
<tr>
<td>5-10 years’ service:</td>
<td>four weeks</td>
</tr>
<tr>
<td>10-15 years’ service:</td>
<td>six weeks</td>
</tr>
<tr>
<td>More than 15 years’ service:</td>
<td>eight weeks</td>
</tr>
</tbody>
</table>

An employee who is dismissed by reason of gross misconduct may not be entitled to notice. An employee is only required to give an employer one week’s notice irrespective of his or her length of service, though a greater period may be provided for in the employee’s contract of employment.

The statutory provisions can be contrasted with the position at common law, under which an employee is either entitled to his or her contractual notice period or, where the contract is silent as to notice (or indeed where there is no contract), notice which is reasonable under the circumstances. What constitutes reasonable notices depends on the circumstances of each particular case and consideration must be given to the status and responsibility of the employee. For example, in *Tierney v Irish Meat Packers* [1989] ILT 5, an employee with nine years’ service as the group credit controller was awarded six months’ notice by the High Court.

### 10.5 What indemnities must be paid?

Please see the answer to 10.4 above. In the case of redundancies, please see the answer to 10.3 above.

### 10.6 What are the consequences of not having the right grounds/ following the right procedure?

Please see the answer to 10.3 above.
10.7 Do special rules apply in certain situations?
Employers should also ensure that they comply with the provisions of any collective agreement or other binding agreement in place in respect of their employees.

11. COLLECTIVE REDUNDANCIES

11.1 What is the definition of collective dismissal?
The Protection of Employment Acts 1977-2007 govern collective redundancies and apply (section 6(1) of the 1977 Act) where the numbers being made redundant in any period of 30 consecutive days amount to at least:

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

11.2 What is the procedure that must be followed in the event of collective dismissals?
The Protection of Employment Acts 1977-2007 set down certain procedural requirements which an employer must follow in the event of a collective redundancy situation. An employer must consult with employee representatives at least 30 days before the first notice of dismissal is given. An employer must also notify the Minister for Jobs, Enterprise and Innovation at least 30 days before the first dismissal takes effect. The Protection of Employment Act 1977 (Notification of Proposed Collective Redundancies) Regulations 1977 set out the information that must be included in the notification to the Minister:

1. name and address of the employer indicating whether the employer is a company;
2. address of the premises where the collective redundancies are proposed;
3. total number of persons normally employed at those premises;
4. numbers and description or categories of employees whom it is proposed to make redundant;
5. period within which the collective redundancies are proposed to be effected, stating the dates on which the first and final dismissals are expected to take effect;
6. reasons for the proposed collective redundancies;
7. names and addresses of the trade unions or staff associations representing employees affected by the proposed redundancies and with which it has been the practice of the employer to conduct collective bargaining negotiations;
8. date on which consultations with each trade union or staff association commenced and the progress achieved at those consultations to the date of notification; and
9. Employers must also provide the criteria for selection of redundancy and the method of calculating redundancy payments other than the statutory redundancy payment.

11.3 What are the consequences of not complying with the applicable procedures?

In the event that an employer fails to consult with employee representatives as referred to above, a complaint may be made to a Rights Commissioner by or on behalf of any affected employee. Where a Rights Commissioner deems a complaint to be justified, he or she will make a declaration to that effect, can require the employer to comply with the relevant requirements and may also make an award of compensation up to a maximum of four weeks' pay per affected employee.

The obligation to consult with employee representatives is an obligation to consult ‘with a view to reaching agreement’. If an employer chooses to announce the number of employees who are to be made redundant, and only then commences consultations with the employee representatives, it may be in breach of its consultation obligations. The consultation process is not intended to be confined only to the question of the level of the redundancy package: it is also intended to address possible alternatives to redundancies.

The Minister for Jobs, Enterprise and Innovation may request the employer to enter into consultations with the Minister or with an officer authorised by the Minister in order to seek solutions to the problems caused by the proposed redundancies. Authorised officers are usually civil servants of the Department of Jobs, Enterprise and Innovation who have the power to enter an employer’s premises and make enquiries to ensure the employer has complied with the provisions of the legislation.

In addition to the power of the Rights Commissioner to make an award, failure to comply with obligations to consult with employee representatives and to notify the Minister for Jobs, Enterprise and Innovation are criminal offences punishable by a fine of a maximum of €5,000 in most cases (see section 11 of the 1977 Act (as amended by section 13 of the 2007 Act). Where the failure relates to the non-observance of the 30-day time period from the date of notification to the Minister (and before which dismissals should not take effect), the fine is a maximum of €250,000 (see section 14 of the 1977 Act (as amended by section 10 of the 2007 Act). While failure to comply with the provisions of the Protection of Employment Acts 1977-2007 is a serious matter, prosecutions are rare.

It should also be noted that the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007, makes provision for the referral of certain collective redundancies to a redundancy panel, which may find that they constitute exceptional collective redundancies. In that event, the employer may not be entitled to redundancy payment rebates otherwise payable from the Social Insurance Fund and the potential awards payable to an employee are considerably increased.
11.4 What are employees’ rights in the event of collective dismissals?
Please see the answer to 11.1 above.

11.5 Are there other circumstances which trigger collective dismissal rights?
No.

12. FORTHCOMING LEGISLATION

Employment Law Compliance Bill (the Compliance Bill)
The Compliance Bill was published on 18 March 2008 with the stated purpose of securing better compliance with employment legislation in accordance with the commitments made by the social partners under Towards 2016. The Compliance Bill has not yet been enacted at the time of writing this chapter. The Compliance Bill provides for a new employment law compliance regime and places increased obligations on employers beyond those contained in the various pieces of employment legislation. It also increases significantly the penalties for breaches of employment law generally. The key changes proposed by the Compliance Bill include the following:
• the establishment of NERA on a statutory footing;
• increasing the existing powers of the labour inspectors of NERA by providing them with enhanced rights of access to premises, employees and data. They can impose on-the-spot fines and can seek High Court orders to enforce compliance;
• permitting the labour inspectors to conduct joint investigations with other State agencies, such as the Revenue Commissioners, Social Welfare inspectors and An Gardai Siochana. The Compliance Bill also empowers NERA to prosecute summary offences;
• further provision for greater penalties for offences arising from employment law – in most cases up to €5,000 and/or 12 months’ imprisonment for summary offences and €250,000 and/or three years’ imprisonment for indictable offences. Employers found guilty of any employment law offences may be ordered to pay the costs of the NERA inspection;
• provision for statutory protection for ‘whistleblowers’ who report suspected breaches of employment law in good faith;
• requirement for a comprehensive list of documents to be maintained by employers for the most recent three-year employment period and to be retained by employers for a further two years after the employment relationship has ceased; and
• requirement that employers also display clearly worded notices in the workplace advising employees of their rights under employment legislation, how to seek redress and how to contact NERA for information. This notice must be in a language which the employees can understand.

Employment Agency Regulation Bill 2009 (the Agency Bill)
The main purpose of the Agency Bill, published on 8 July 2009, is to provide
an enhanced and strengthened regulatory framework for the operation of employment agency services in the state. If enacted, the Agency Bill will replace the Employment Agency Act 1971. The key features of the proposed Bill are as follows:

- it will apply to two types of employment agencies, a ‘placement agency’ and a ‘worker hire agency’, often referred to as a temporary employment agency;
- it provides for the licensing of agencies by the Minister for Jobs, Enterprise and Innovation; and
- it makes it an offence to operate an agency in the state without the requisite licence.

**Whistleblowers Protection Bill 2011 (the 2011 Bill)**

The main purpose of the 2011 Bill is to provide protection to employees who make ‘protected disclosures’ in relation to the conduct or affairs of their employers. In order to be protected, a disclosure must be made ‘reasonably and in good faith’. A protected disclosure amounts to or supports an allegation such as the commission of a criminal offence, failure to comply with a legal obligation, damage to the environment and endangerment of the health and safety of an individual. The 2011 Bill protects the whistleblower from civil liability in respect of the making of a protected disclosure. The 2011 Bill also prohibits an employer from penalising or dismissing an employee for having made such a disclosure. The 2011 Bill is largely based on the UK Public Interest Disclosure Act 1998.

**Protection of Employees (Temporary Agency Work) Bill 2011**

This Bill has only just been published at the time of writing this chapter. The Bill, which intends to transpose Directive 2008/104/EC, provides for equal treatment in terms of basic working and employment conditions for temporary agency workers as if they were recruited directly by the hirer to do the same job. In addition, the Bill provides for information on job vacancies within the hirer to be given to agency workers and for agency workers to be given access to the hirer’s collective facilities and amenities such as canteen, workplace crèche and transport services. The Bill also contains whistleblowing provisions. Significantly, it is intended that the Bill, when enacted, will have retrospective effect to the transposition date of 5 December 2011.

**Other**

A bill to reform the JLC system which provides for the making of employment regulation orders in certain industry sectors is awaited. This bill would attempt to remedy the defects highlighted in the High Court case which held the JLC system to be unconstitutional (see *John Grace Fried Chicken Ltd v The Catering Joint Labour Committee*). In addition, the Minister for Jobs, Enterprise and Innovation has commenced a consultation process in relation to the possible reform of the employment rights fora in Ireland. This is likely to lead to significant changes in how employment disputes in
Ireland will be heard over the coming months and years.

13. **USEFUL REFERENCES**
For information on the Rights Commissioner Service and the Labour Relations Commission: [www.lrc.ie](http://www.lrc.ie).
For information on the Employment Appeals Tribunal: [www.eatribunal.ie](http://www.eatribunal.ie).
For information on the Labour Court: [www.labourcourt.ie](http://www.labourcourt.ie).
For information on the Equality Tribunal: [www.equalitytribunal.ie](http://www.equalitytribunal.ie).
For information on the Health and Safety Authority: [www.hsa.ie](http://www.hsa.ie).
For information on the civil courts: [www.courts.ie](http://www.courts.ie).