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Submission on the Reform of the State's Employment Rights and Industrial Relations Structures and Procedures

Chambers Ireland has long called for the streamlining of employment rights bodies and strongly welcomes the proposed reforms. We have made a number of recommendations on how best to implement these reforms to ensure the process is easily accessible and fair to all involved.

Resolutions of grievances and disputes as close to the workplace as possible and as early as possible after they arise

One of the most important aspects of this reform is to try to minimize the number of cases that reach the stage of a formal hearing. We propose that the best way to do this is to have a screening process to review cases even before they reach the first instance body. This is to ensure that any nuisance or invalid cases are thrown out straight away. This will increase efficiency and ensure that the main body only deals with valid claims.

In our view the first requirement must be that evidence be submitted showing that both the employer and the employee have sought to achieve an agreement before any complaint can be submitted for adjudication.

In addition, there should be provision of a mediation service at a local level to help achieve an agreed solution to a complaint. This could help in delivering a mediated solution that would greatly diminish the causes of a conflict.

Another proposal which will help disputes to be solved as early as possible is the introduction of clear time limits. Any claim must be made within three months, at most, from the date the matter occurred. This is more than enough time for an employee to gather information on their rights and also ensure that the cases are not being brought forward years after the event has happened. Further to this, there should be a maximum period of four weeks in which the claimant is able to appeal a decision made by the first instance body. We note that the only acts currently in place that allow for the filing of a complaint after a six month period are:

1. The Competition Act of 2002.
2. The Consumer Protection Act of 2006.
3. The Health Act of 2007.
4. The Protection for Persons Reporting Child Abuse Act of 1998.

A simple and efficient structure – a first instance body and an appeals body

Chambers Ireland fully endorses the proposal to streamline all of the current employment structures into two bodies. We recommend that while the Employment Appeals Tribunal may not be the first

instance body, it is vital that the best functions of the EAT are kept in the revised landscape. The EAT currently does a good job and this reform should be used to enhance its best features to make it even more productive rather than simply abolish it.

While we agree with the suggestion that there could be different channels within each of the two entities, we would suggest that they be divided in different ways. It is important that these bodies make a distinction between claims that are made by those still in employment and claims in relation to issues of termination. This will ensure that these different types of cases can be dealt with in an efficient and timely manner. If necessary, the channel for those currently in employment could be divided into two suggested channels of (a) disputes of interest and rights and (b) equality issues. However, the Minister must be very careful to ensure that these divisions of channels do not produce too many different areas and entry points, thus re-creating the current problem that this reform aims to solve.

Provision to provide legal costs to employers on a discretionary basis

Currently, if a case is taken against an employer, they are responsible for paying their own legal costs regardless of whether the final decision is in their favour or not. On the other hand, claimants rarely incur costs as more often than not their lawyer will only receive payment if they win. We propose that in cases ruled in favour of the employer, the costs must be paid by the employee who brought the claim. There can be exceptions for example, if a legal issue of public interest has been raised.

It is our view that there must be some risk associated with bringing a claim, such as exists in our courts system. If an employee has a genuine claim then there will be nothing to fear for that employee regarding costs. This will also help to keep down the number of frivolous claims currently being brought forward.

Appointments procedure and panel system

There is no need for the first instance body to have a panel. The body should be chaired by one chairperson. If the chairperson is suitably qualified they should be able to solely decide the outcomes of cases just as the judges in our court system currently do. Further to this, we propose that this chairperson should be appointed through open competition. This is essential to avoid appointments of people who do not possess sufficient knowledge of employment law. It also ensures that this process can be held up to be transparent and accountable.

Information for employers and employees

While the notion of one website covering all employment rights and industrial relations matters may be helpful in our view it would be better to give due consideration to the consolidation of employment legislation into one single piece of consolidated legislation using the Taxes Consolidation Act 1997 as a template. This would further increase the efficiency of the reformed employment structures and make it easier for people to access information. Upon completion of this work, the sheer amount of information on employment legislation, codes of practice, etc could then be further consolidated.

We suggest instead that existing websites could be streamlined to provide information on the various different streams of information. A portal model may well be the best interim arrangement based on the citizens information system which provides external links to all of these websites while also providing news content, e.g.: updates on relevant cases, changes in employment law. We also suggest that the functions of and information provided by NERA are valuable and should continue to provide this information.

It is important to ensure that employees and employers are both able to access relevant information. There is a very comprehensive amount of information available to employees regarding their rights and advice on how they should proceed when making a claim. This principle must also apply to employers. Any revamped website must ensure that content is not one-sided and provides clear and impartial information to employers and employees alike.

Administration

Decisions on individual cases should be reached and announced at a much quicker rate. Currently, it can take twelve months to get a date at the EAT and a further three months to reach a decision on the case. This can cause a number of issues. For example; if the decision of a hearing is to have an employee reinstated who was let go over 15 months previously, this will cause the utmost difficulty for the employer.

In order to combat this, the Government must ensure best practice in administration. The people who are examining the applications in the first place need to know exactly what they are looking for. A single application form and standardised processes will also contribute to making the administration process more efficient and allow claims to be dealt with at a quicker rate.

The new body should sit in regional centres

In order to ensure maximum efficiency, any new body should sit in regional centres and sit every week. These hearings should be chaired by one person who is appointed permanently to a location. The current system whereby different chairs sit in one location hampers the consistency of decision and transparency.

If you would like to discuss any aspect of this submission, please contact Seán Murphy on 01 400 4308 or sean.murphy@chambers.ie .

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