Welcome to the May Edition of Keeping in Touch

The months of March and April have been interesting times for this office.

The firm has been nominated for the Employment Law Team of the Year and for the Principal Law Firm of the Year in the Irish Law Awards which are sponsored by AIB Private Banking. As a small specialist boutique law firm it is a huge honour for us to receive two nominations. This is the second time the firm has been nominated in the Employment Law category. The last time was in 2013. These achievements were only possible because of the dedication of the staff of this firm in delivering services to our clients.

In April Richard Grogan of this firm was interviewed by the Irish Independent for an article on low pay and low hour employment. A copy of the article which was published in the Weekend Review in the Irish Independent is in the publication section of our website.

In the case reported in the Labour Court website DWT1525 against Kays Realchefsrealfood Limited this firm acted for an employee who was awarded €12500 by way of implementation of a Rights Commissioner Decision relating to Penalisation under the Organisation of Working Time Act.

In a case against a well known refuse collection firm this firm successfully, on behalf of a client won a case for victimisation under the Safety Health and Welfare at Work Act. The award was not paid up and the matter is currently before the Labour Court seeking implementation.

Recently before the Rights Commissioners an award of €15,000 and €18,000 respectively was awarded to employees who were dismissed, according to the employer by reason of redundancy which awards were made in addition to the redundancy payments previously made.

The firm has been involved in a number of Decisions recently relating to the trucking industry where significant awards have been made by Rights Commissioners but which are currently under appeal.

In the last two months the firm has seen a significant rise in the number of claims being brought by employees who are still in employment. These are relating to deductions from wages, non payment of the National Minimum Wage and excessive hours. Previously cases involving excessive hours of work tended to be brought by manual workers. We are now finding a significant rise in claims by both and senior and middle management, particularly now that there appears to be a change in business requiring a 24/7/365 availability of managers. There are serious health and safety risks to employees particularly where they are not getting 11 hours break between finishing and starting work the next day due to emails and phone calls made late into the evening which they are expected to respond to. Employees are having their holidays interrupted.

We can expect significant changes in how cases are dealt with when the new Workplace Relations Bill is enacted. We believe that there will be new regulations, which will be issued, dealing with the presentation of claims and how they will be managed particularly by the Labour Court. We welcome both the Bill and look forward to receiving the new regulations which will hopefully make dealing with employment rights issues quicker, more efficient and less costly to both employers and employees. As part of the Workplace Relations Bill this office along with many others made submissions. What the Minister for Jobs Enterprise and Innovation must be congratulated for is the fact that a number of submissions that were made by various parties throughout the process have been taken on board by the Minister. Of course nobody had all their submissions accepted. There are bodies who act for both employers and employees who would have liked to have seen certain proposals introduced but to be fair the Minister has acted in a very reasonable way, he has taken on board a considerable number of the submissions made throughout the process and he must be congratulated on this. Once the Bill is enacted and becomes law then there is a considerable amount of work which will have to be done in making sure that we have a world class service. This does involve good faith on behalf of employer and employee representatives working in a constructive way with those implementing the new procedures to ensure the new procedures will be beneficial to everybody in having cases dealt with in a speedy, efficient and effective way which will reduce costs for both employers and employees and also for the State.

In the current issue we look at some of the recent developments which have occurred in Employment Law and Personal Injury. The aim of this publication is to try and keep those, with an interest in employment law, up to date with recent developments. We hope those of you reading this news letter find it of interest.

We also cover in this issue, including

- Whistleblowing
- A review of the wider implications of the Working time Directive Opinion in the case of Irish doctors
- The importance of procedures helping employers win cases.
- Comments on recent Unfair Dismissal cases
- Dismissals during probation
- Can a redundancy be a dismissal?
- A guide on running a disciplinary case
- Collective redundancies
- Traps on re-hiring employees.
- What to do if you as an employer receive a claim.
- Social Media in the workplace
- Variations of contracts
- Settlement Agreement Traps
- Workplace stress
- Changes in UK employment law
- Structured settlements in Injury claims
- Rent a Room relief
- New Back to Work Scheme

Whistleblowing

In a recent UK case the UK EAT/0335/14/DM given on the 8th of April 2015 the case involved Chersterton Global Limited and Nurmohamed.

The employee in this case reported a belief in relation to a misstating of costs and liabilities which affected the earnings of 100 senior managers including himself. The employee was subsequently dismissed. The Employment Tribunal, at first instance held that the interests of 100 senior management was a sufficient group of the public to be a matter of public interest. The employer appealed. There were two grounds the first was that 100 senior managers was not a

sufficient group and the second was whether or not the disclosure were of real public interest.

The UK EAT held that the words in the UK legislation "in the public interest" were introduced to do more than prevent a worker from relying upon a breach of his own contract of employment where the breach is of a personal nature and there are no wider public interest implications.

It was argued by the employer that the public interest must have a quality of real interest to the public. The UK EAT referred to the case of Babula v. Waltham Forrest College 2007 ICR1026 in which case Wall WJ stated,

"an Employment Tribunal hearing a claim for automatic Unfair Dismissal has to make three key findings. The first is whether or not the employee believes that the information he is disclosing meets the criteria set out in one or more of paragraphs……. The second is to decide objectively, whether or not that belief is reasonable. The third is to decide whether or not the disclosure is made in good faith".

It was pointed out in that case that it is effectively a subjective test as to whether the belief was held by the worker. Whether it is a reasonable belief is an objective test.

Wall LJ in the Babula case at paragraph 75 stated,

"Provided the workers, belief (which is inevitably subjective) is held by the Tribunal to be objectively reasonable, neither (1) the fact that the belief turns out to be wrong – nor (2) the fact that the information which the claimant believed to be true (and may indeed be true) does not, in law amount to a criminal offence, is, in my judgement, sufficient of itself, to render the belief unreasonable and thus deprive the whistleblower of the protection afforded by the Statute".

Wall LJ went on to state,

"To expect employees on the factory floor or in shops and offices to have a detailed knowledge of the criminal law sufficient to enable them to determine whether or not particular facts which they reasonably believe to be true are capable, as a matter of law, of

constituting a particular criminal offence seems to be both unrealistic and to work against the policy of the Statute".

The UK EAT stated,

"The objective of the protected disclosure provisions is to protect employees from unfair treatment for reasonably raising in a responsible way genuine concerns about wrong doing in the workplace".

The UK EAT held that disclosures potentially affecting the bonuses and commissions to be paid to 100 senior managers is sufficient to be made in the public interest.

In the UK it now appears that there is a very low bar for employees to gain the protection of the UK legislation which is similar to ours.

Where an employee discloses an issue which may have legal or regulatory implications and has a reasonable belief in relation to the matters which the employee has disclosed then it may well be that the employee obtains the protection of the legislation. The fact that a matter which is reported in a reasonable way, in accordance with the legislation does not ultimately turn out to be correct does not mean that the employee does not maintain the protection of the legislation.

Where a matter is disclosed to employers, employers need to be very careful to have regard to the Protected Disclosure legislation.

Organisation of Working Time Act

The case of Broadford Cleaning and Maintenance Services Limited and Kalcuks concerned the issue of compensation under Section 19 of the Act relating to Holiday pay. In this case the Rights Commissioner awarded a sum of €1200. The employee appealed the quantum of the award.

The Labour Court held in its opinion that in circumstances of the case merely requiring the employer to pay the economic value of the holidays, withheld does not provide sufficient redress for the contravention of the Act that occurred. The Court went on to state,

"As a matter of general principle compensation should not only reflect the economic loss suffered by the complainant but should act a deterrent against further infractions of the Act. Applying that general principle in this case the Court is of the opinion that the award made by the Rights Commissioner should be increased to €2500".

In this case the Court accepted that the compensation awarded by the Rights Commissioner was only the economic loss.

Advocate General Bot Opinion in Case C-87/14 European Commission in Ireland

This case involves the failure of Ireland to fully implement its obligations under the Working Time Directive 2003/88/EC as it relates to doctors in training.

There have already been many comments in relation to this particular case so we are concentrating on the issues which have not been highlighted.

In Paragraph 28 it is stated,

"The aim of Directive 2003/88 is to lay down minimum requirements intended to improve the living and working conditions of workers through an approximation of the provisions of National Law in particular, those governing working time. That harmonisation…. is intended to guarantee better protection the safety and health of workers by ensuring that they are entitled to minimum rest periods – particularly daily and weekly – and ensuring adequate breaks….".

The opinion went on to state in paragraph 29,

"in light of that essential objective, each employee must, among other things, have adequate rest periods, which much not only be effective in enabling the person concerned to recover from the fatigue engendered by their work, but also preventive in reducing as far as possible the risks posed to the safety or health of employees by successive periods of work without the necessary rest".

The opinion referred in particular to the case of Jaeger C/151/02. It went on to state that the various requirements laid down in the directive,

"… constitute rules of EU Social Law of particular importance, which must be applied to every worker as the minimum necessary to ensure the protection of his health and safety".

This referred in particular to case C-257/10

This are important statements of principle which adjudicators and the Labour Court going forward will in all likelihood apply and have applied regularly in the past.

What is extremely interesting about the case is that the opinion in paragraph 32 refers to the fact that where the doctors are directly involved in medical procedures, where they have not had sufficient rest and break periods the safety of such patients could also be put at risk. This has greater application in our view. Effective it would also apply in the case of workers where other individuals could be put at risk. In the case of those involved in the road haulage industry other road users. In the case of individuals working on building sites other workers as just two examples.

The opinion at paragraph 38 points out that the ECJ has consistently held that working time for the purposes of the directive is,

"…any period during which the worker is working, at the employer's disposal and carrying out his activity or duties in accordance with National Law and/or practice; and that the concept of "working time" is to be understood as antonymous to the concept of "rest periods" the two being mutually exclusive".

It pointed out that there is no intermediate category between working time and rest periods.

At paragraph 44 it has been pointed out that the ECJ held,

"The decisive factor in finding that a situation in which a worker performs –on-call duties at his actual place of work can properly be characterised as "working time" for the purpose of Directive 2003/88

is the fact that the worker is required to be physically present at the place determined by the employer and to remain available to the employer in order to be able, in case of need, to provide the appropriate services immediately. According to the Court, those obligations must therefore be regarded as coming within the ambit of the performance of that workers duties".

In this case it would come within the Jaeger case C151/02 at paragraph 61 there is an interesting issue that it may well be for working time that if an employee is required to remain at a place that they are not free to choose and to be physically present in a particular place that this constitutes a constraint which prevents them freely engaging in their personal activities.

An issue which regularly comes up in working time cases is the issue of compensatory rest. This is covering in the Jaeger case and during such periods. The worker is not subject to any obligation vis-a-vis his employer which may prevent him from pursuing freely and without interruption his own interests in order to neutralise the effect of work on his safety or health. Such rest periods must therefore follow on immediately from the working time which they are supposed to counteract in order to prevent the worker from experiencing a state of fatigue or overload owing to the accumulation of consequetive periods of work. The opinon also points out that that Court has stated that,

"In order to be able to rest effectively , the worker must be able to remove himself from his working environment for a specific number of hours which must not only be consecutive but must also directly follow a period of work in order to enable him to relax and dispel the fatigue caused by the performance of his duties".

This case has wider importance in determining some of the more general principles as they apply to working time cases.

The full opinion of the Court will be given in the early summer. However, the opinion in itself is very useful as an over view of the law in this important area for those of us who practice in Employment Law.

KEEPING IN TOUCH

THE NEWSLETTER OF RICHARD GROGAN & ASSOCIATES SOLICITORS

Falling asleep at work

In the March 2015 issue of the Industrial Relations News it was reported that a some 61% of employees and managers served by Peninsula Business Services (Ireland) Ltd admitted to falling asleep at work. This survey was based on a survey of 1,022 of Irish employees and managers who are part of that organisations client base.

Now the MD of the company stated that employers need to stress the importance of sleep and make it clear that staying up late and neglecting the health and safety of fellow colleagues is unacceptable. This is something we fully accept.

However data on disabilities or conditions such as Narcolepsy which may partly explain the falling asleep at work was not captured in this survey.

In addition the survey did not indicate how many of such companies would have had situations where employees would not have received their rest and break periods under Section 12 of the Organisation of Working Time Act as regards daily rest breaks or in relation to Section 11 dealing with the 11 hour rest break. As employers are obliged to maintain records under the Organisation of Working Time Act which would include compliance it would be interesting to see what percentage of these companies may have had breaches under those pieces of legislation. This would equally partly explain such incidents arising.

In relation to rest and break periods at work there are obligations for both employers and employees. Employers must be aware that failing to make sure that employees receive the proper rest periods between finishing work and starting the next day and during working hours as set out in legislation creates significant risks. Employees must also be aware of this. The Organisation of Working Time Act is a piece of Health and Safety legislation. It is there to protect everybody.

This office sees some dreadful accidents. Many of these arising from situations where the Working Time Act has not been complied with.

Proof that Applying Fair Procedures Works in Unfair Dismissal Cases

In other issues of our Newsletter we have highlighted the importance of procedures and have set out cases where employers have lost because procedures have not been followed. We thought it would be a useful idea to maybe set out some cases where because procedures

were followed employers have won. In the case of Baran and Donegal Meat Processors Limited UD608/2013 the case involved a General Operative. The employer had a strict absence policy which was agreed with the Union. The policy stated that an employee was, on the morning of any absence ring the Respondent before 10am. That call must come from the person themselves. Medical certificates must be produced within three working days of the absence and the employee must advise the respondent by 4pm on the day preceding their return to work. In this case the claimant breached the absence policy on three separate occasions within a one year period.

There had been two previous incidents. On the final occasion another individual phoned to say the employee would not be reporting for duty as he was sick. The company contended that this person was informed that the employee himself must make contact. He did not. He was also advised that if he did not report to work when he was returning to work.

The Tribunal pointed out that the respondent had "somewhat strict policies"

This case highlights the importance of employers having policies in place. In this case it is to be noted that these arrangements had been negotiated with a Union.

In the case of Kenneth O Reilly and Johnson Mooney and O Brien Bakeries UD329/2013 this case involved an employee who was employed as a part time driver. In 2008 he became a part time driver and an assistant transport manager. Following a restructuring of operations drivers were requested to alter their shift patterns, hours and rates of pay. This was necessary due to a significant changed business environment. The claimant pointed out that the changes proposed would have required the employee to carry out night work which he could not do due to his personal domestic circumstances. The employee contended there was enough day work available for him to continue to carry out day duties.

A number of meetings were held between the parties, agreement could not be reached. Eventually a decision was taken by the company to make the Claimant redundant and redundancy was paid which was inclusive of an ex gratia payment in lieu of his entitlements.

The Tribunal held that the there was a genuine redundancy situation and that appropriate procedures were adopted by the Respondent company and in those circumstances the appeal failed.

These two cases highlight the importance of employers putting in place appropriate procedures.

It is important for employers to have procedures in place relating to a dismissal. If those procedures are followed then there is far less chance that the dismissal can be held to be an Unfair Dismissal.

If a Redundancy situation arises it is important to have it fully documented so that should it be challenged, in the future, the employer will be able to show that it was a genuine redundancy.

We have been highlighting in many issues of Keeping in Touch cases where employers have lost because of failure to follow procedures. We thought it was time to set out cases where employers won because of following procedures.

High Court Rules in Unfair Dismissal Case

The case of the Governor and Company of the Bank of Ireland and James Reilly was a Decision given by Mr. Justice Noonan on the 17th of April 2015.

The case is interesting in two aspects. The first is in relation to facts itself. The second, and probably more importantly is in the stating of what the law is.

Very few cases of Unfair Dismissal ever go to the High Court.

The facts of the case are the employee prior to his dismissal had an excellent record and was diligent and hard working. However as issues arose in relation to the transmission of certain emails as the result of which the employee was dismissed.

The High Court reviewed the legislation and in particular Section 6 and 7. The Court agreed with the view of Judge Linnane in Allied Irish Banks v. Purcell [2012] 23ELR189 where she stated,

"References were made to the Decision of the Court of Appeal in British Leyland UK Ltd v. Swift [1981] IRLR91 and the following statement of Lord Denning MR at page 93. The correct test… was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered that in all cases there is a band of reasonableness, within which one employer might reasonably take one view, another quite reasonably take a different view".

It is clear that it is not for the EAT or this Court to ask whether it would dismiss in the circumstances or substitute its view for the employer view but to ask was it reasonably open to the Respondent to make the decision it made rather than necessarily the one the EAT or the Court would have taken.

The Court in this case reviewed the case of Morgan v. Trinity College Dublin [2003] 3IR147 and held that,

"Thus, even a holding suspension ought not to be undertaken lightly and only after full consideration of the necessity for it pending a full investigation of the conduct in question. It will normally be justified if seen as necessary to prevent a repetition of the conduct complaint of interference with evidence or perhaps to protect persons at risk from such conduct. It may perhaps be necessary to protect the employers own business and reputation where the conduct in issue is known by those doing business with the employer. In general however, it ought to be seen as a measure designed to facilitate the proper conduct of the investigation and any consequent disciplinary process.

The Court went on to state,

"The corollary presumably therefore is that an employee ought not to be suspended where suspension is not necessary to facilitate these matters".

This is a very important statement of the law. The fact that a company policy may have provision for suspension pending an investigation

taking place does not mean that an employer can automatically suspend.

As the Court pointed out suspension can cause damage to the reputation and standing of an employee and is potentially capable of constituting a significant blemish on the employee's employment record with the consequences for his or her future career.

In the case in question three employees including the employee who brought the claim against the bank were suspended and two were not where all five were being investigated for breach of the, email policy. In this case it was admitted that the employee was suspended without the person, who made the decision to suspend him seeing the relevant emails in advance of suspending him.

At paragraph 53 the Court sets out that the evidence from the company was that the practice of circulating these inappropriate emails was widespread. The Court held that the bank were well aware of the practices. It was pointed out that despite this knowledge there was no evidence of any significant by the bank to address the issue.

The Court pointed out that if a policy of zero tolerance was going to be adopted by the bank to breaches of its email policy its employees were entitled to receive some notice of this policy shift.

This was a very important statement by the Court. If there is going to be a change in the way a particular disciplinary matter is addressed by an employer it is important that the employees are made aware of same.

The Court held that with regard to the facts of the case the Court was satisfied that the conduct of the bank in relation to the dismissal and the events leading up to it could not by any objective standards be described as reasonable. The Court went on to say that the evidence led to a conclusion that at a very early juncture a decision was made within the higherarchy of the bank to make an example of the particular employee in order to deter others with similar behaviour in the future. The Court held that while lip service was paid to the observance of procedures it is clear that there was only ever going to be one outcome. The Court held that the banks response to this case was entirely disproportionate and could not in the Courts view be

regarded as falling within the range of reasonable responses of a reasonable employer.

The issue of the employees conduct relating to a dismissal has importantly been clarified by the Court. The Court has held,

"It will be seen from the express wording of S.7 that the concept of the conduct of the employee contributing to the dismissal is confined to situations where the Court considers that compensation is the appropriate remedy".

The Court went on to state,

"It would of course be unreal to suggest that the Court could not have regard to the conduct of the employee in considering in a general sense whether the remedies of reinstatement or reengagement were appropriate".

Importantly however the Court further went on to state,

"However, in my view, it is equally true that the mere fact that the employee may have been guilty of some degree of misconduct even if that was felt to have contributed to the dismissal cannot of itself preclude the possibility of those remedies being invoked".

The Court in this case concluded that the banks conduct was unreasonable and disproportionate and the Court held that the appropriate remedy was reinstatement.

An interesting aspect of this case is that the employee has been out of work for approximately six years. In the normal course of events for example, an EAT case which orders reinstatement if the employee does not reinstate the employee the employee brings a claim to the Circuit Court under Section 11 of the Unfair Dismissal (Amendment) Act 1993 which in the case of an Order relating to reinstatement or reengagement may direct the employer to pay to the employee compensation of such an amount as is considered reasonable in respect of the loss of wages suffered by the employee by reason of the failure of the employee to comply with the determination.

In this case the matter has proceeded the full way to the High Court. The employee has been out of work for six years. In the normal course of events this would mean that the employee is entitled when an Order of reinstatement is made to the full salary back to the date of dismissal. However it must be noted that under Section 11 the jurisdiction is a matter for the Circuit Court normally to make an Order as to what would be fair and reasonable.

The issue in this case is what happens if the employer does not reinstate. Unlike cases going from the EAT up for implementation to the Circuit Court it would appear to the writer that a High Court Order directing reinstatement can be nothing more than reinstatement and that the employee in those circumstances would be entitled to seek implementation of that Order.

This is a very important Decision of the High Court. It states the law relating to dismissals. What it does also appear to state is that where there is a culture within an organisation that an employer and by extension a Tribunal or Court must look at that culture so that if an action was condoned or not acted upon then acting against one employee and not against another employee may well constitute an Unfair Dismissal.

Unfair Dismissal

The case of Karen Stapleton and St. Colman's (Claremorris) Credit Union being case UD1776/2012 concerned a case where the employee was made aware that an unspecified allegation of bullying had be made against her. Thereafter she had to endure the stress and confusion of knowing that there were certain vague accusations being made against her. However no allegations were ever put to her. The stress of the situation took its toll on the claimant's health and she went on certified sick leave for a time. A number of meetings took place. None of the various meeting which took place addressed the allegations being made against the claimant. One of the meetings addressed the claimant's grievances in relation to how she was being treated. Ultimately on the 18th of Sept the employee was told that she could not return until her demands were withdrawn and she was told to go home and think about it. The employer contended that the employee had not been dismissed but the Tribunal held that the employee in the starkest and baldest of terms had been told to leave

her employment. The Tribunal found that the Claimants conduct was at all times were beyond reproach and that her dismissal was both substantially and procedurally unfair. By majority the Tribunal directed that the employee be reinstated. The minority Decision was that she be awarded €24,500.

One of the interesting aspects of this case is that the respondent stated that the employee had brought a solicitor to a meeting and that the committee felt intimidated by him and that there was much debate as to whether he should be in attendance or not and nothing got resolved.

The case highlights the importance of procedures being applied.

There is nothing stopping and employer limiting who can represent an employee. This would usually be a Union or a fellow worker. In a Union environment this does not cause any difficulties as Union representatives are well trained in procedures. Having an employee in a non unionised firm represent a fellow employee creates difficulties. If an individual wishes to have a solicitor present it is best practice to allow it particularly if there is the potential of the employee being dismissed.

This is an issue which is going to continue to arise as to the right of representation. If an employee is under threat of dismissal and requests that they are represented by a solicitor and that is refused and there is not adequate representation for the employee at any disciplinary hearing by way of a Union representative from a Union recognised by the employer. Then employers can be in difficulties in a subsequent Unfair Dismissal claim particularly if fair procedures are not fully adhered to. A solicitor representing an individual at a disciplinary matter is only entitled to make representations on behalf of somebody and to object if there are unfair procedures being applied. They may also have a right to cross examine any witnesses. The reality of matters is that some stage if an Unfair Dismissal claim is brought they would have that right anyway. If an employer is dealing with a vulnerable employee who is under a disciplinary procedure which could result in a dismissal then it is always advisable to allow them a solicitor be present to represent them if required.

Dismissals During Probationary Periods

The legislation in Ireland allows for a dismissal of an employee within 12 months of commencing employment and there is no claim under the Unfair Dismissal legislation. However this does not mean that the employee may not have a claim under for example Equality Legislation. In addition if the employee has been dismissed because of pregnancy or any of the protected grounds of the Unfair Dismissal legislation they will have an Unfair Dismissal claim also. They do not need 12 months service in such cases. Under Equality legislation equally if a person is dismissed because they are pregnant or for any of the protected areas, under that legislation the employee may have an Equality claim.

It is important for employers to set out in their contract of employment what the probationary period is.

It is important for employers to set out that during the probationary period an employee can be dismissed without the necessity of going through the disciplinary procedure.

Even during the probation period employees are entitled to minimum notice and are entitled to all their holiday pay up to the date of the dismissal.

Before dismissing any employee it is advisable that there should be a meeting with the employee. The employee should be advised as to the reason for the dismissal and the employee should have an opportunity to challenge same.

Is Redundancy a Dismissal?

In the case of Desmond McGuire and Sledadgh Farms Limited UD1320/2012 the EAT held that there was a failure by the employer to adhere to any procedures fair or otherwise as regards the Redundancy.

The EAT held that there was no discussion in advance of the decision to make the employee redundant and that the employee was told that he was simply being made redundant. The Tribunal held that there

was no discussion on the possibility on the alternatives to redundancy.

The EAT held that the employee was not offered a right of appeal against the Decision to make him redundant.

The employee was awarded €10,000 in addition to the redundancy sum of €6,500 previously paid. The case highlights the importance for employers to follow fair procedures in a redundancy situation. While an employer might see it as a redundancy situation the reality on it is that if the individual is made redundant it is a termination of the employment and is effectively a dismissal.

Employers should notify employees in writing of the fact that redundancy is being considered.

The employee should be advised that there is a potential that the employee will be made redundant.

The employee should be advised in writing as to the basis under which the employees' job is likely to be or could be selected for redundancy.

The employee should be invited to a meeting. The employee should be given a right of representation. The employee should be given a right to challenge the selection of the employee for redundancy. The employee should be aware of the basis under which the employee might be selected and the selection process. The employee should be given the opportunity to make representations.

It would appear following the recent Decision of the EAT that the employee should be given the right of appeal in redundancy situations.

While this is simply a Decision of one division of the EAT it is a well thought out and reasonable Decision.

Appeals in redundancy cases have not been the norm. However, the EAT clearly thought about this issue. A dismissal by reason of redundancy is still a dismissal. If an individual is not fairly selected for redundancy then they have claim for Unfair Dismissal. An

employer therefore should treat any termination by way of redundancy as effectively a dismissal and the normal disciplinary procedures should apply as regards the hearing and the right of appeal with appropriate amendments on the basis that the employee has not done anything wrong but is simply being made redundant because of economic or organisational reasons.

There is a very good reason to have full hearing and an appeal process. It gives the employee an opportunity to challenge the redundancy and their selection for redundancy if relevant. It means that the employee will have had the opportunity of giving their version of events. Their views will at least be heard, if not accepted. Having an opportunity to air their views is often important for employees. By having fair and full procedures in place it minimises the risk of an Unfair Dismissal claim against the employer being upheld. Failure to apply a fair dismissal procedure in the case of a redundancy may result in it being deemed to be an Unfair Dismissal.

It should always be remembered in selection for redundancies a fair open and transparent selection process must always be applied.

A Quick Overview of Running a Disciplinary Case

1. The employee should receive details of the precise charges and allegations against the employee in writing.
2. The employee should receive all particulars of all allegations against the employee and the basis under which they are being made.
3. The employee should receive copies of any witness statements.
4. The employee should receive copies of any other documentation or evidence which will be relied upon such as CCTV.
5. There should be a clear distinction and separation between an investigation and a disciplinary process. Where it is possible the person who is investigating whether or not disciplinary action should be taken should not then be part of the disciplinary process.
6. The decision maker must be able to show that they acted independently. This means that they are without influence by those who conducted the investigation and the disciplinary process.

7. Make sure that all evidence against an employee is furnished to the employee in advance.
8. There should be a clear agenda of meetings. The employee must be made aware of the topics which the employee will be required to address and to answer.
9. Minutes of meetings whether or not agreed should be made available to the employee. This means that proper records of the employees responses to any allegations are fully recorded.
10. The employee should be given an opportunity to comment on the minutes and to make any amendments that the employee feels are appropriate or at least to have them recorded.
11. Where possible an independent party should hear any appeal. It is important in every case following any disciplinary sanction that the employee is given an opportunity to appeal and is advised of same in writing.
12. The employee should be offered the right to be accompanied at any meeting.
13. Where dismissal may be an option the employee should always be advised of this at the earliest opportunity. Where an employee is being advised that the disciplinary process may include dismissal it is advisable that if the employee requests legal representation that this is granted.

Resign in Haste

The case of Jordan and Niope Limited case UD1069/2013 is interesting. In that case the employee had a number of difficulties with the employer.

The Tribunal decided that the employee did not give the employer an opportunity to ameliorate the situation. They held that in constructive dismissal cases the burden must fall on the Claimant who must establish the decision to resign is the only decision open to the Claimant and has considered other reasonable alternative approaches.

The case highlights the importance for employees not resigning in haste.

Employees who are considering resigning do need to consider getting appropriate advice. There are often steps which can be taken by the

employee. The employee may not believe that the employer will actually deal with a grievance properly. Saying this it is important that employees put in a grievance and utilises whatever procedures are there. This may also include issuing various complaints under various pieces of employment legislation before taking the decision to resign.

Just as we would advise employer not to dismiss an employee without obtaining legal advice equally an employee should be very slow to resign without getting legal advice.

Collective Redundancies – What is an Establishment?

This issue came up recently in the ECJ in what is called the Woolworths Case. In 2008 Woolworths made thousands of staff redundant after it became insolvent. The staff claim they had been denied a consultation period because they worked in numerous small shops in the UK.

The case went to the ECJ. The Advocate General's opinion recommended that for the purposes of determining when collective redundancy consultation obligations are triggered under EU law an establishment means the local employment unit in which the potential redundant employees are assigned to carry out their duty and not the whole organisation. The UK EAT had held to the contrary.

In Ireland a collective redundancy is one which involves making a specified number of employees in a "establishment" redundant within in a 30 day consecutive period. The problem is that the definition of what is "an establishment" under the Protection of Employment Acts 1977-2007 is not very clear.

The opinion of the Advocate General is extremely useful.

The final decision from the Court is still awaited but it is likely, as they normally do that the Court will follow the opinion of the Advocate General.

Pending the decision of the ECJ issuing, employers if they are considering collective redundancies need to be careful. It should be noted that employers fail to comply with the consultation obligations can be fined up to €250,000.

It should be noted that however the threshold for collective redundancies is not that high. For example, if at least five individuals are dismissed in an employment employing between 20 and 50 employees then this is a collective redundancy if they occur within 30 days of the first redundancy and in such circumstances consultation is required.

The Traps for Rehiring Employees

Some employers mistakenly believe that if an employee is fired and is then reemployed that this is a new employment and runs from the date of the rehiring only.

Let us give an example,

Employee A is employed on the 1st of January 2013.

Employee A is dismissed on the 24th of December 2013.

Employee A is rehired on the 1st of January 2014.

Employee A is dismissed on the 23rd of December 2014.

Employee A is rehired on the 20th of January 2015.

Employee A is dismissed on the 1st of April 2015.

Some employers will mistakenly believe that in those circumstances the employee has no employment law rights as they do not have 12 months continuous service. This is incorrect.

Where an employee is dismissed and is rehired within 26 weeks of the dismissal this will not break continuity of service under the Unfair Dismissals Acts.

Where an employee is dismissed by reason of redundancy if his or her contract is renewed and he or she is reengaged by the same employer under a new contract with the same terms and this takes effect immediately or within 4 weeks with prior notice then again the employee is protected for the purposes of the Redundancy legislation.

It is important that employers are aware of this position as otherwise they may well end up in a situation of believing that an employee has no Employment Law rights whereas in fact the employee is fully protected. In the example above whether it was Redundancy or an Unfair Dismissal the employee will have the necessary service to make a claim under both Acts.

What to do as an Employer if you Receive an Employment Claim

You receive a letter from Workplace Relations attaching a set of proceedings which a current employee or a former employee has made against you.

The first piece of advice which we will give is do not react. The second piece of advice is get advice from an Employment Solicitor.

Why should you get advice from an Employment Solicitor?

Employment Law is complex. If you react, in the wrong way, you may make matters worse. You may in fact be subjected to a penalisation or even a victimisation claim.

So do I just send the proceedings to my Solicitor?

The answer to this is of course no. You need to bring to a solicitor all back up information.

If the claim is that the employee has not received a contract of employment then it is important to bring that contract to your Solicitor. Let your Solicitor check out whether the contract complies with the statutory minimum requirements. Remember the claim by the employee will not be that they did not receive a contract of employment. It is that they did not receive a document that complies with Section 3 of the Terms of Employment (Information) Act. Many contracts are deficient.

If you have received a claim under the Organisation of Working Time Act bring your working time records to your Solicitor. Let your Solicitor review them to see whether or not there is a good defence or whether the employee has a valid claim.

If you have an Unfair Dismissal claim bring all the documentation relating to the dismissal with you to include all notes of any meetings and all letters or communications to or from the employee.

Why do employers get employment claims?

The simple answer is usually that employers have not obtained legal advice in the past.

No employee should ever be dismissed without getting legal advice from a Solicitor. It is important that procedures relating to a dismissal are properly addressed. It is important that the employee gets a fair hearing. It is important that they have a right of appeal. The fact that you believe that an individual should be dismissed for gross misconduct does not mean that fair procedures do not need to be followed. If fair procedures are not followed the Decisions from the Employment Appeals Tribunal are littered with cases where employees did something wrong but still won an Unfair Dismissal claim because fair procedures were not followed.

If you received in a set of proceedings bringing to you to Court from a former employee there may be little you can do except seek to defend the case. The reality of matters is that cases will be won and lost on the records which you as an employer have. If you do not have the records there is a significant potential that you may well lose the case.

If it is an existing employee who makes a complaint then your Solicitor will be able to guide you through dealing with same hopefully as part of a grievance procedure so as to see if the grievance can be resolved without the necessity of going to Court.

Why are Procedures so Important

Procedures are important because procedures are the basis under which any Court or Tribunal will decide whether you as an employer have acted fairly. Records will determine whether a part time employee is receiving equality of treatment. Your records will determine whether an employee has a valid claim under the Working Time Act and whether the burden of proof is on the employee or whether it is on

you. Failing to have the proper records means that you will bear the legal and evidential burden of showing compliance with the Act.

How to Avoid Claims by Employees

Every employer runs the risk of having an employment claim against them by an employee. The best way of avoiding claims against you by employees is to get advice from an Employment Solicitor as to what documents you should have. Your employment solicitor will be able to review documents such as contracts, staff handbooks and your policies and procedures.

An Employment Lawyer will be able to advise you on the law relating to part time or casual workers and full time workers. Your Employment Lawyer will be able to advise you as to the law relating to holidays, what minimum periods the employee must get during the year, when they must get those holidays, what happens when an employee is out sick and how to deal with it. Your Employment Solicitor will be able to advise you as to what to do if you are proposing to put a person through a disciplinary matter or you receive a grievance. Having proper policies and procedures in place which have been put in place with the benefit of an employment solicitor significantly reduces the potential for you as an employee having any claims.

This is a Guide only it does not purport to be legal advice.

Social Media in the Workplace

Employers have identified the potential of Social Media when marketing their services and products. However few have seriously looked at the difficulties and challenges which can arise with regard to Social Media usage by their employees.

What is an employer to do where, for example, an employee on their own twitter account tweets offensive or abuse tweets. What is an employer to do if an employee on a social media site publishes an offensive, abusive or pornographic picture?

Is there a difference if that is seen by other members of staff, customers of the company or is simply a general tweet which is not seen or at least is not complained about.

Is there a difference between a theoretical risk of a member of the public seeing the employees tweet and associating that individual with the company?

What is to be a reasonable response?

It is important to have a clear Social Media and IT Policy. It is equally important to have a clear bullying, harassment and disciplinary policy that does provide that the sending of offensive material through any social media site is prohibited. It is useful to include specific sites as examples. The absence of a clear Social Media Policy or IT Policy is highly detrimental to an employer's defence of for example an Unfair Dismissal Claim if an employee is dismissed because of such actions.

In developing a Social Media Policy for the workplace it is important for employer to make sure that the new policy can be integrated with the existing disciplinary procedures.

There is clearly a connection between a social media policy and any existing policies dealing with emails and internet use, remote working and even individuals posting on their own device such as a smart phone. It is also necessary to look at bullying and harassment procedures.

There is also the issue as to how does the employer access such documentation and how does it deal with it. It is important to look at Data Protection and discrimination principals in relation to reviewing gathering and using information from Social Media sites particularly when disciplining an individual.

It is vitally important that when such a policy is put in place it is properly and fully communicated to staff and that there is evidence that staff are aware of such policy.

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Who Owns an Employees Contacts

Many employees would have contacts and connections on Twitter, Facebook and LinkedIn. Sometimes there would even be premium accounts set up by the employer. The issue as to who own the content and the contacts can be particularly important. It is particularly relevant when a senior or very well connect employee moves job and seeks to compete with a former employer.

There is very little case law relating to the ownership of such contacts.

Because for example LinkedIn in their User Agreement states that all contents and information in relation to the account belong to the user, employers may have a difficulty in maintaining confidentiality and ownership of such contacts.

Very often employers will seek to rely on confidentiality agreements.

It is useful now to consider including in any contract of employment for senior individuals or individuals who are going to be in a position to become well connected that the contract of employment specifically provides that all contacts on any social media on any work based social medal site will be the property of the employer and will be transferred over. At a very minimum the employer will want to have a situation in place whereby the departing employee will be required to delete their contacts.

The ownership of Social Media content and contacts is now becoming a significant issue for employers and it is one where employers need to be vigilant in failing which they may well have a situation that the employee can take the contacts with them.

Unilateral Variation of Contracts

In a UK case of Hart –v- St. Mary's School (Colchester) Limited UK EAT/035/14 the UK EAT held that a school which had a clause which stated that the hours of work of the employee may be subject to variation depending of the requirement of the school. Another stating that the teacher would work all hours that may be necessary in the reasonable opinion of the Principal for the proper performance of her duties. The employee was a part time support teacher working three

days per week who was changed to working a five day week. It was held by the EAT that the variation clause was not sufficiently clear when looked at in the context of a teacher moving from part time work to full time work and was sufficient to amount to a repudiation of the contract.

The case is interesting in that the Decision also looked at the issue of repudiation of contracts.

The case is also a warning to employers that unless a unilateral variation clause is absolutely clear and unambiguous the employer may be precluded from acting unfairly and unilaterally.

Settlement Agreements

In the case of Flynn and Desmond being a decision of the Court of Appeal, appeal number 14/685 citation number 2015 IE CA 34, is an interesting judgement delivered by Mr. Justice Alan Mahon.
The facts of the case are a lay litigant settled a personal injury claim for some €5,000.00. The individual then sought to rescind the agreement.
The Court of Appeal looked at the Law in relation to this and stated that
"The absence of legal advice will not usually prove fatal to a contract, but may do in certain circumstances. In Lloyds Bank –v- Bundy 1974 Q.V. 326-339 Lord Denning R. stated the following "…English Law gives relieve to one who, without independent advice, entered into a contract upon terms which are very unfair or transferred property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influence or pressure brought to bear on him by or by benefit by the other".
The Court went on to state that the fact that a plaintiff is litigating in person does not in itself and cannot be a reason for allowing a settlement to be undone. This is particularly so when the individual is advised to seek independent advice prior to concluding the settlement.
The Court held that there were difficulties with the claim and that the settlement figure could not be said to be unwise. The Court also went on to state that the Court was satisfied that the absence of legal advice to the plaintiff at the time of his agreement to compromise the

proceedings does not, in the circumstances of the particular case, undermine that agreement.
What is interesting about this decision is that while the Court identified the importance of upholding settlements the Court pointed out that it was in the circumstances of this particular case that the absence of legal advice did not undermine the agreement.
It would therefore appear that simply advising a lay litigant to obtain legal advice is not in itself sufficient. If the agreement is improvident or imprudent then the Courts may well set aside any agreement even if the individual has been offered the opportunity to obtain legal advice.
It would appear advisable that where an individual is been asked to sign away particular rights that they are advised of the importance of obtaining independent legal advice. In many employment cases particularly where there is a termination employers are now providing a sum of money to enable the individual to obtain independent legal advice. This appears to be good practice if the individual is not legally represented.
Improvident agreements could well be open to challenge.

Workplace Stress - A Cost for Employers

At the very start we must point out that some stress in a workplace will always be there. In fact if there was not stress in the workplace it would be unnatural. Therefore some stress will always be there. Other forms of stress are not acceptable.
Work related stress has been identified generally, both in Ireland and at international levels as a significant concern for both employers and employees. Stress can potentially affect any workplace whether it is small or large and in any activity. Stress is a state which is accompanied by physical, psychological or social complaints or dysfunctions and which results from individuals feeling unable to bridge a gap with the requirements or expectations placed on them. Surveys have shown that individuals are well adapted to cope with short term exposure to pressure. This can even be regarded as positive specialists contend. However greater difficulties arising coping with prolonged exposure to intensive pressure. Also individuals can react differently to similar situations and the same individual can react differently situations at different times of his/her life.

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Stress is not a disease. Stress however is by way of prolonged exposure may reduce the effectiveness at work and may cause ill health.
All manifestations of stress at work cannot be considered as work related stress.
The UK Health and Safety Executive defines work related stress as the adverse reaction people have to excessive pressure or other types of demands placed on them at work. It is however "at work" element that is important. Stress outside the workplace is nothing to do with the employer. An employee may be stressed at work because of something having absolutely nothing to do with the workplace. Where there is something stressful going on in a persons' private life it is difficult for them to leave it behind them when they enter the workplace. However this is not work related stress. It should be noted that a person can be stressed purely because of work. Work induced stress is more significant from an employer's perspective as the employer may be partly or wholly responsible for it.

What issues are causing workplace stress?

The reason for asking this question is that workplace stress has risen in the last number of years. In October 2014 a paper from the Wharton School of Business stated that global competition, downsizing and a state of being electronically tethered to the officer combining to create increased levels of stress.
Work related stress has a human cost for the employee suffering it. There is also a financial cost to the employer.
In a report by Towers Whatson on the 3rd of September 2014 the report highlighted that the levels of workplace disengagement significantly increased when employees experienced high levels of stress. The research shows that those employees who claimed to have experienced high levels over 57% also reported that they were disengaged. In contrast only 10% of employees claiming low levels of stress said they were disengaged and half of this group appear to be highly engaged.
Rebekah Hemes from the specialist Towers Whatson stated
"The research clearly shows the destructive link between high levels of stress and reduced productivity. A third of respondents said they were often bothered by excessive pressure in their job and this can lead to higher instances of disengagement and absenteeism; clear indicators of low productivity in the workplace".

High levels of stress also result in increased sick days. The research showed highly stressed employees took an average of 4.6 sick days per year compared to 2.6 sick days for low stress employees. Presenteeism being the act of attending work when unwell and unproductive was 50% higher for highly stressed employees with an average of 16 days per year. It was around 10 days for employees with low stress.

Why are there high levels of stress?

The Towers Whatson report indicated inadequate staffing was the biggest cost cited by employees with over 53% naming it as the top cause of workplace stress. However only 15% of senior management acknowledged it as a cause of stress. What was strange in the report was some 34% of employers thought that employees being available outside working hours was one of the top causes of stress. However employees disagree with this and only 8% listed it as a contributor to workplace pressure. In a recent report in the Irish Times on the 9th of March it was indicated that Sunday nights was the night the employees got the least amount of sleep. This would clearly be an indicator of stress in the workplace.

What is the role of employers?

Because work related stress is a health and safety issue it is covered under the provisions of the Safety Health and Welfare at Work Act. Therefore the employers have the duty to put in place the procedures and policies to protect and promote the health of their employees. At the end of the day however it is simply good business. A stressed employee could simply quit. If they are in a senior management post or even in a management post this can significantly disrupt a business. A stressed employee is not going to be as productive. This is a cost to the business. Trying to replace an employee who has quit or has become permanently unwell is a financial cost as regards recruitment. A new employee has to be trained in.

Conclusion

There is a strong business case for effectively managing stress. This presumes that an employer values their employees. It is important to minimise within reason the stress caused to workers by their work. The advantage of same is that they maintain their productivity.

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How can you identify if you have a stressed work force?

The identification of a stressed work force is always going to be difficult. However there are some indicators. If the company has a higher turnover than competitors at any particular level then stress may be one of the causes.

If a particular division in the company has a higher turnover than a comparbable division in the company then stress may be an issue.

If an employer has higher than normal absences due to sick leave there may be a problem in the workplace.

If a particular division in the workplace has higher than normal disciplinary or grievance issues then equally there could be a difficulty in that business.

No business no matter how big or how small it is will be immune from work related stress.

As has been said at the start not all stress is bad. However prolonged exposure to an excessive amount of stress can make an employee ill.

Stress related claims are on the increase both under the Industrial Relations Act by way of grievance hearings going through for more formalised hearings or in personal injury claims being brought.

Equally stress is resulting in claims for constructive dismissal.

This office has seen a considerable increase in complaints of work related stress over the last number of months. It is a worrying trend.

Changes in UK Employment Law

The 6th of April saw a number of changes of family friendly legislation in the UK.

These included bringing the rights of adoptive parents in line with the legal rights to pay with their biological counterparts.

Couples or single adopters no longer have to fulfil a 26 week qualifying period to access the benefits of adoptive leave. Employers will be obliged to make equal payments for adoptive pay as those made for maternity pay.

The first six weeks of adoptive leave will be the same as that for maternity leave being 90% of normal earnings while statutory pay for maternity, paternity, adoption and shared parental leave will increase to STG£139.58 per week.

An employee's right to unpaid parental leave will extend until a child is 18 years of age.

There will be an increase in the limit on a week's pay when calculating statutory redundancy pay to STG£475.00 per week.

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Statutory sick pay sees an increase to STG£88.45 per week.
The maximum compensation for unfair dismissal rises to STG£78,335.00.
The Liberal Democrats has sought to push through mandatory reporting of the gender pay gap. Companies with more than 250 workers could face fines up to STG£5,000.00 for non compliance.
An amendment has been proposed to the Small Business Enterprise and Employment Bill to be debated in the House of Lords. Mandatory gender pay gap reporting is likely to come into force in the next 12 months.

Structured Settlement Agreements for Periodic Payment in Personal Injury Cases

The Supreme Court in the case of Grace O'Neill (a Minor) suing by her Mother and Next Friend Paula O'Neill and the National Maternity Hospital being a judgement given by Mr. Justice Barton on the 10th of March 2015 confirms that in the absence of a statutory framework to provide for structured settlements and/or the making of periodic payment orders and there being no agreement between the parties as to how best to proceed and in the absence of any exceptional circumstances of factors which would warrant the Court in the exercise of its inherence jurisdiction intervening in the best interest of the Plaintiff the Court refused the application to provide for a structured settlement for the making of periodic payments. The decision is interesting in that in paragraph 71 it was stated,

"This case and others like it illustrate, if illustration is required, the urgent necessity of bringing forward long promised legislation to amend the law in this area for providing for structured settlement for the making of periodic payment orders in such cases"

In this case the Plaintiff suffered catastrophic injuries which will affect her for the rest of her life.

The decision is an excellent decision for going through the law in this area. What is interesting is that the Supreme Court has again stated the importance of amending the legislation to provide for structural settlement payments and for periodic payment orders in cases where there have been catastrophic injuries which will last for the lifetime of the individual.

Motor Insurers Bureau of Ireland

A recent case in the English Court of Appeal on the 9th of March 2015 is a case of Delaney –v- Secretary of State for Transport.

In this case Mr. Delaney was involved as a passenger in a serious road traffic accident. He sustained significant injuries. It was found that he was in possession of cannabis as was the driver of the vehicle involved. The Insurer declined to indemnify the driver and as such he was deemed uninsured.

A claim went to the Motor Insurers Bureau.

The Bureau sought to deny responsibility for payment of compensation to the injured party due to the element of criminality involved. A case was brought against the Secretary of State for Transport.

In July 2014 a UK High Court Judge found for Mr. Delaney saying that the Government was in significant breach of the European Directive by adding exclusions which were not identified nor were in contemplation of the EU when the Directive was made. The matter was appealed by the Secretary of State for Transport. The Appeal was dismissed.

While this is a UK case the decision may have significant implications for any case where the Irish Motor Insurers Bureau is seeking to avoid its responsibility due to a claim of criminality.

Renting a Room in Your Home

This is known as Rent-A-Room Relief. If you let a room or rooms in your sole or main residence as residential accommodation and the gross amount received including monies for food, laundry and similar services and goods does not exceed in the year of assessment a sum of €12,000 per annum the profit on the losses on the relevant sum are treated as nil for Income Tax purposes. The effect of it is that the income received is disregarded for income tax, PRSI and USC purposes.

No account is taken of any expenses which you incur in generating the relevant income.

Since 1 January 2010 the relief does not apply to payments received either directly or indirectly from a person connected with you where the individual is an office holder or employee of the person making the payment or person connected with the person making the payment.

For example relief is not due where an individual receives payment from his or her employment in respect of accommodation provided by the individual in his or her family or individuals visiting the employer for work related or training trips.

The relief importantly does not affect your right to Mortgage Interest Relief nor Capital Gains Tax exemption if the property is sold.

New Back to Work Scheme

The Minister for Social Welfare has indicated that a new scheme will be introduced whereby workers returning to work will keep a portion of their social welfare for a period of time depending on how many children they have.
This is a most welcome job creation concept. Both the Minister and the Government must be congratulated on this.
There is however a BUT. This is that this scheme will only work if there is, for any new jobs created, an inbuilt potential for the individual going back to work to get an increased wage. Many of these jobs, which will be created, will be minimum wage jobs. Unfortunately the Minimum Wage Act does not provide for any increase in wages on the basis of service.
The proposal being made is very welcome. It is a novel approach. It will work. However for it to work long term the issue of social welfare dependency of such workers will need to be addressed. The only way it can be addressed is by a system whereby a wage increase potential is clearly evident to a worker, taking up such work, that their wage will increase over time.

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Dublin Hotel Rates returning to 2007 peak says PwC

A recent PwC report has shown that hotel room rates in Dublin will return to their 2007 peak of €109 per night next year on the back of growing demand and a lack of new supply.
The Irish Hotels Federation has called on the Government to maintain the special 9% tourist industry VAT rate introduced in 2011.
If the rate climbs to €109.00 next year costs will have risen by almost 15% between 2014 and 2016.
The IHF has claimed that the 9% VAT rate has created 30,000 jobs and was highly cost effective to boost the industry.
The VAT rate fell from 13.5% in 2011 to 9%.
The Minister for Finance Michael Noonan has warned he would consider reintroducing the 13.5% rate if the industry is not passing on savings to customers.
It would be interesting to see if the Government would consider if profits are rising in the hotel industry, whether some of the gains should be passed on to employees. Currently a considerable number of employees in the hotel industry and the hospitality industry are at or close to the National Minimum Wage. As those on low rates of pay can often also claim social welfare the effect of the reduced VAT rate is to increase profits, reduce the tax take to the State and at the same time maintain the social welfare dependency of such workers which is a significant cost to the State.
As the hospitality industry has effectively gained a veto over future Employment Regulation Orders as a result of a recent court case where the State backed down to a challenge to the new legislation.
The hospitality industry and particularly the hotel industry is becoming a low paid industry effectively subsidised by social welfare because many such workers are entitled to claim Family Income Supplement.
Maybe the Government will consider another way of dealing with matters. Maybe the Government will consider a situation of maintaining the 9% VAT rate subject to the hotel industry in particular agreeing to a new ERO and failure to agree to ERO will result in the 13.5% VAT being reintroduced.
This may sound unusual but the State is presently subsidising employment in the hotel industry by reduced VAT and paying social welfare to individuals that are working. That is not sustainable.

Tel: 6177856 | **Fax:** 6177857 | **Email:** info@grogansolicitors.ie | **www.grogansolicitors.ie**

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- Guide to Personal Injury and Accident claims
- Time limit for bringing Personal Injury claims
- Do you need a Solicitor to bring a Accident or Personal Injury claim

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