



DÁIL ÉIREANN

AN BILLE UM CHAIDREAMH SAN ÁIT OIBRE, 2014 WORKPLACE RELATIONS BILL 2014

LEASUITHE TUARASCÁLA REPORT AMENDMENTS

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AN BILLE UM CHAIDREAMH SAN ÁIT OIBRE, 2014 —AN TUARASCÁIL

WORKPLACE RELATIONS BILL 2014 —REPORT

Leasuithe Amendments

1. In page 14, line 13, to delete “address” where it secondly occurs and substitute the following:

“address. For the avoidance of doubt, the address given on any letter or other document to the complainant/employee by a respondent/employer shall also be deemed to be an address at which the person ordinarily resides as shall any address specified under the Registration of Business Names Act 1963”.

—Mick Wallace, Peadar Tóibín.

2. In page 14, between lines 25 and 26, to insert the following:

“(3) An unincorporated entity as a respondent which does not register the name of the unincorporated entity under the Registration of Business Names Act 1963 or an incorporated entity which in its dealings with a complainant/employee uses a business name which has not been registered under the Registration of Business Names Act 1963 shall be deemed to have committed an offence.

—Mick Wallace, Peadar Tóibín.

3. In page 14, between lines 25 and 26, to insert the following:

“(3) The service of any complaint or the making of a complaint against an unincorporated or incorporated body where the respondent has not notified the complainant in writing pursuant to section 3 of Terms of Employment (Information) Act 1994 shall be deemed for all purposes to have been validly served on that entity using the trading name as advised to the complaint/employee or in the absence of notification the trade name or other name under which the respondent trades.”.

—Mick Wallace, Peadar Tóibín.

4. In page 16, between lines 16 and 17, to insert the following:

“(3) By way of regulation prescribed by the Minister, the Commission shall establish a mechanism to provide for representation by or on behalf of retired employees, including organised groups of retired employees, in relation to his, her or their pensions, deferred or otherwise.”.

—Mick Wallace, Clare Daly.

5. In page 16, between lines 16 and 17, to insert the following:

“(3) The Commission shall, not later than six months after establishment day, issue a report detailing options to introduce a mechanism that would provide for representation by or on behalf of a retired employee in relation to his or her pension entitlements and the form of such mechanism may be prescribed by the Minister by way of regulation.”.

—Dara Calleary.

6. In page 16, between lines 16 and 17, to insert the following:

“(3) The Commission shall, not later than six months after establishment day, issue a report detailing options to introduce a mechanism to provide for representation by or on behalf of a retired employee in relation to his or her deferred pension entitlements and the form of such mechanism may be prescribed by the Minister by way of regulation.”.

—Dara Calleary.

7. In page 21, between lines 5 and 6, to insert the following:

“(10) The Chairman of the Labour Court may require any representative, of a complainant or respondent, for gain, to comply with any code of practice made by the Commission under *subsection (1)(a)*.

(11) A representative for gain shall include but shall not be limited to counsel, solicitor, trade union or employer representative body with a negotiating licence, a body corporate or unincorporated body or individual including but not limited to any insurance company but shall not include any unincorporated body or incorporated body which does not provide services for any fee or reward, premium or annual or other premium or fee.”.

—Mick Wallace.

8. In page 24, between lines 17 and 18, to insert the following:

“(c) who have a minimum of seven years practical experience in representing employees and/or employers in employment cases before the Workplace Commission and/or the Labour Relations Commission and/or the Employment Appeals Tribunal and/or the Equality Tribunal and/or The Labour Court.”.

—Mick Wallace.

9. In page 24, to delete lines 24 to 31 and substitute the following:

“ “practising barrister” means a person having been called to the Bar of Ireland;

“practising solicitor” means a person admitted to be a solicitor and standing enrolled as a solicitor in the State.”.

—Mick Wallace.

10 In page 24, between lines 33 and 34, to insert the following:

“Employer obligation to display notice of employment rights in the workplace

26. Every employer shall display in a prominent position in or at the place of work, being a place to which employees have regular access and in such a position that it may be read easily by employees, a notice or notices in a form, manner, and in an appropriate language or more than one language that is reasonably likely to be understood by the employees concerned containing the following information—

- (a) entitlements under employment legislation, either generally or by reference to particular enactments or a particular class or particular classes of enactments or to employees of one or more than one particular class or description, as may be specified in the notice concerned,
- (b) complaints procedures concerning entitlements under employment legislation, and
- (c) the contact details of the Workplace Relations Service for the purposes of—
 - (i) making general enquiries regarding entitlements under, and the application and enforcement of, employment legislation, and
 - (ii) communicating information to the Director pursuant to the Protected Disclosures Act 2014.”.

—Peadar Tóibín.

11. In page 24, between lines 33 and 34, to insert the following:

“Employer obligation to maintain and produce employment records

26. An employer who does not maintain and produce employment records is liable to a penalty of €4,000, and where that employer is a company, the secretary of that company is liable to a separate penalty of €3,000.”.

—Peadar Tóibín.

12. In page 27, line 31, to delete “42 days” and substitute “28 days”.

—Peadar Tóibín.

13. In page 28, line 6, to delete “42 days” and substitute “28 days”.

—Peadar Tóibín.

14. In page 28, after line 37, to insert the following:

“Liability of a company officer or officers for a breach of employment law

29. Where a breach of employment law is committed by a body corporate or by a company officer or officers acting on behalf of a body corporate and is determined to have been so committed, with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person or persons who, when the breach was committed was

a company officer or officers of the body corporate, then that person or persons shall be personally liable for the breach committed.”.

—Peadar Tóibín.

15. In page 30, line 35, after “offence” to insert “and for the purpose of the performance of the Commissions functions”.

—Peadar Tóibín.

16. In page 31, line 4, after “contract” to insert “(and the sub-contracting chain)”.

—Peadar Tóibín.

17. In page 33, line 9, to delete “42 days” and substitute “28 days”.

—Peadar Tóibín.

18. In page 33, line 11, to delete “€2,000” and substitute the following:

“€4,000, save and except in the case of failing to pay the National Minimum Wage under section 23 of the National Minimum Wage Act 2000 a sum not exceeding €20,000 per employee”.

—Peadar Tóibín.

19. In page 33, line 11, after “€2,000,” to insert the following:

“save and except in the case of failing to pay the National Minimum Wage under Section 23 of the National Minimum Wage Act 2000 a sum not exceeding €20,000 per employee,”.

—Mick Wallace.

20. In page 33, line 15, to delete “42 days” and substitute “28 days”.

—Peadar Tóibín.

21. In page 33, line 19, to delete “42 days” and substitute “28 days”.

—Peadar Tóibín.

22. In page 35, line 5, after “dispute” to insert “, but only by teleconference in exceptional circumstances and when agreed to by the complainant”.

—Peadar Tóibín.

23. In page 36, between lines 2 and 3, to insert the following:

“(9) Where the provision of *subsection (5)* applies the case resolution officer may direct either or both parties to produce such documents, statements or particulars to the other party as the case resolution officer shall determine to include but not limited to an outline of any evidence, witness or documents either party intends to rely upon.”.

—Peadar Tóibín.

24. In page 36, between lines 6 and 7, to insert the following:

“(10) Where the provision of *subsection (4)* applies the case resolution officer may direct

either or both parties to produce such documents, statements or particulars to the other party as the case resolution officer shall determine to include but not limited to an outline of any evidence, witness or documents either party intends to rely upon.”.

—Mick Wallace.

25. In page 36, between lines 17 and 18, to insert the following:

“(3) A complainant may, in proceedings before a mediation officer in respect of a complaint presented, or dispute reverted by an adjudication officer, by the complainant under this Part, be accompanied and represented by—

- (a) a trade union official within the meaning of section 11 of the Act of 1990,
- (b) an official of a body in respect of which the mediation officer, is satisfied represents the interests of employers,
- (c) a practising barrister or practising solicitor,
- (d) in the case of a complainant who is less than 18 years of age, the complainant’s parent or guardian in addition to a person specified in *paragraph (a), (b) or (c)*, and
- (e) any other person with the permission of the mediation officer, as may be appropriate.”.

—Peadar Tóibín.

26. In page 36, to delete lines 36 to 38 and substitute the following:

“(6) The terms of a resolution consequent upon a mediation conference under this section shall be binding on the parties and if either party contravenes any such term, in whole or in part, to the terms of the resolution then on an application for enforcement the District Court may make an order directing that person to carry out those terms, or as the case may be the terms to which the application relates; but the District Court shall not by virtue of this subsection, direct any person to pay any sum or do any other thing which (had the matter been dealt with otherwise than mediation) could not have been provided for.”.

—Peadar Tóibín.

27. In page 37, between lines 13 and 14, to insert the following:

“(10) Where the provision of *subsection (4)* applies the mediation officer may direct either or both parties to produce such documents, statements or particulars to the other party as the mediation officer shall determine to include but not limited to an outline of any evidence, witness or documents either party intends to rely upon.”.

—Mick Wallace.

28. In page 37, between lines 32 and 33, to insert the following:

“(c) Any person appointed as an adjudication officer immediately after the commencement of this Part will be required to be adequately trained in the area

of equality legislation, in addition to all relevant industrial relations and employment law.”.

—Peadar Tóibín.

29. In page 38, line 37, after “member,” to insert the following:

“or practising barrister or solicitor, or in the case of a complainant who is less than 18 years of age, the complainant’s parent or guardian,”.

—Peadar Tóibín.

30. In page 39, between lines 15 and 16, to insert the following:

“(iv) make a decision that a separate hearing for an employment equality case is required, in addition to a general employment rights decision,”.

—Peadar Tóibín.

31. In page 39, between lines 21 and 22, to insert the following:

“(iii) in relation to the disposal of goods and provision of services and the disposal of premises and provision of accommodation as set out in the Act of 2000,”.

—Peadar Tóibín.

32. In page 39, between lines 23 and 24, to insert the following:

“(5) Where the claimant and respondent agree the Adjudication Officer may revert the dispute for mediation by a mediation officer.”.

—Peadar Tóibín.

33. In page 39, line 26, to delete “6 months” and substitute “2 years”.

—Peadar Tóibín.

34. In page 40, line 1, to delete “6 months” and substitute “2 years”.

—Peadar Tóibín.

35. In page 40, line 5, to delete “6 months” and substitute “2 years”.

—Peadar Tóibín.

36. In page 40, line 13, to delete “6 months” and substitute “2 years”.

—Peadar Tóibín.

37. In page 41, line 4, to delete “public.” and substitute the following:

“public save:

(a) where the Labour Court considers it appropriate to hear the matter otherwise than in public; or

(b) where both of the parties agree that it shall be heard in private.”.

—Mick Wallace.

38. In page 41, line 8, after “section” to insert the following:

“and shall keep a register of all decisions available for inspection for such fee as shall be determined by the Minister”.

—Mick Wallace.

39. In page 41, to delete lines 9 to 20.

—Mick Wallace.

40. In page 41, to delete lines 25 to 27 and substitute the following:

“(13) The Minister may, by regulations, make provision in relation to any matter relating to the presentation of a complaint, referral of a dispute or conduct of proceedings under this section that he or she considers appropriate. Without prejudice to the foregoing the Minister may—

(a) in consultation with the Chairman of the Labour Court make such regulations relating to representatives of a complainant or a respondent to include the terms of engagement but not limited to contingency fees or percentage fees, evidence of indemnity insurance of a minimum figure as specified by the Minister per complainant or respondent represented and as to the standard of conduct of such representative or representatives in cases before an adjudication officer or the Labour Court and such other matters as he or she in consultation with the Chairman of the Labour Court considers appropriate,

(b) without prejudice to *paragraph (a)* the provision of *paragraph (a)* shall not apply to a counsel or solicitor or trade union or employer representative body having a negotiating licence not to any person, body or entity not providing their services for gain or profit.

(14) The chairman of the Labour Court may on his or her own volition or having received a complaint from an adjudicating officer may refer any counsel or solicitor to such regulatory body responsible for regulating any counsel or solicitor if the Chairman of the Labour Court considers it appropriate. In respect of any other body or entity the Chairman may issue an admonishment either in private or by doing so in public to include a statement on the internet in respect of any matters the Chairman considers breached any provision of any regulation made by the Minister.

(15) Any regulation made by the Minister shall include a procedure for a complaint against any representative of a complainant of representative being made, heard and adjudicated upon.”.

—Mick Wallace.

41. In page 41, between lines 36 and 37, to insert the following:

“(c) for the avoidance of doubt a specified person shall include a barrister, solicitor, trade union or employer representative body having a negotiating licence.

—Mick Wallace.

42. In page 41, between lines 36 and 37, to insert the following:

“(15) In the event of a party issuing a complaint under section 4 of the Data Protection Act 1988 (as amended) and the other party failing to provide any documentation in whole or in part with the party who failed to supply such documentation subsequently wishes to rely on in any case before an adjudicating office or on appeal to the Labour Court that party shall be precluded from producing or relying on such documentation.”.

—Mick Wallace.

43. In page 42, line 11, to delete “the complaint or dispute to the adjudication officer” and substitute “this complaint or dispute to a different adjudication officer”.

—Mick Wallace.

44. In page 42, lines 31 to 33, to delete all words from and including “but” in line 31 down to and including “1977” in line 33.

—Peadar Tóibín.

45. In page 44, line 6, to delete “public.” and substitute the following:

“public save:

(a) where the Labour Court considers it appropriate to hear the matter otherwise than in public; or

(b) where both of the parties agree that it shall be heard in private.”.

—Mick Wallace.

46. In page 44, between lines 11 and 12, to insert the following:

“(14) The Labour Court may remit a case to a different adjudication officer on such terms as the Labour Court shall determine to include directing an adjudicating officer to rehear the case applying the law to the facts as determined by the Labour Court.”.

—Mick Wallace.

47. In page 46, line 2, after “out” to insert “having given the party a period of 30 days to pursue the complaint”.

—Mick Wallace.

48. In page 48, between lines 17 and 18, to insert the following:

“Safeguarding employees

58. In addition to existing provisions in enactments to safeguard workers from penalisation and victimisation, an employer or any person acting on behalf of an employer shall not penalise an employee for seeking to exercise or having exercised any entitlement under employment legislation including availing or cooperating with the Workplace Relations Commission.”.

—Peadar Tóibín.

49. In page 52, to delete lines 31 to 36.

—Peadar Tóibín.

50. In page 55, after line 42, to insert the following:

- “(e) the Chairman of the Labour Court for the purposes of having any particular case dealt with may—
 - (i) appoint a person or persons to be a temporary member of the Labour Court,
 - (ii) appoint a person or persons to be a temporary Deputy Chairman of the Labour Court,
 - (iii) the Minister shall from time to time nominate a body of persons who may be appointed as a temporary member of the Labour Court or a temporary Deputy member of the Labour Court on such terms and conditions as he or she may determine,
 - (iv) any person who may be nominated as a temporary member of the Labour Court or temporary Deputy Chairman of the Labour Court shall be appointed to a list of persons whom shall be reviewed every five years. Any person nominated by the Minister shall be subject to a nomination from the Public Appointment Service and the production by the 31st March in each year of a certificate from the Revenue Commissioners confirming compliance with the Taxes Consolidation Act 1997 (as amended).”.

—Mick Wallace.

51. In page 62, between lines 25 and 26, to insert the following:

“(2) Section 1(3) of the Act of 1984 is amended by the insertion of the following paragraph:

- “(e) the employer is deemed to be insolvent in circumstances where he has ceased trading and payments to employees have been determined by the Minister to have *de facto* been stopped on a permanent basis for a period of six weeks or more.”.

—Peadar Tóibín.

52. In page 62, between lines 25 and 26, to insert the following:

“(2) Section 4 of the Act of 1984 is amended by the insertion of the following paragraph:

- “(g) where following notification in writing by the employee, employees or a representative body to the Minister the employer is deemed to be insolvent in circumstances where he has ceased trading and payments to employees have been determined by the Minister to have *de facto* been stopped on a permanent basis for a period of six weeks or more.”.

—Peadar Tóibín.

53. In page 63, between lines 4 and 5, to insert the following:

“(g) by the insertion of the following subsections—

“(11) Without prejudice to subsections (5), (6) and (7) and section 8 the Minister shall make a decision on an application without delay but in any event no later than 60 days after the application is made.

(12) If the time limit provided in subsection (11) expires before the Minister makes a decision on an application the Minister shall, not later than 30 days after the expiry of the time limit, publish a statement containing the reasons for the delay in making a decision.”.”.

—Peadar Tóibín.

54. In page 63, between lines 16 and 17, to insert the following:

“(b) the insertion of the following subsection:

“(1A) A person who has applied for payment under section 6 of this Act of a debt or an award and to whom no decision of the Minister has been communicated may 60 days after the application is made present a complaint to the Tribunal that the Minister has failed to process their application.”.”.

—Peadar Tóibín.

55. In page 69, after line 19, to insert the following:

“Other amendments

87. (1) The Organisation of Working Time Act 1997 is amended—

(a) in section 19, by the insertion of the following subsection:

“(1A) For the purposes of this section, a day that an employee was absent from work due to illness shall, if the employee provided to his or her employer a certificate of a registered medical practitioner in respect of that illness, be deemed to be a day on which the employee was—

- (a) at his or her place of work or at his or her employer’s disposal, and
- (b) carrying on or performing the activities or duties of his or her work.”,

and

(b) in section 20, by the substitution of the following paragraph for paragraph (c) of subsection (1):

“(c) to the leave being granted—

- (i) within the leave year to which it relates,
- (ii) with the consent of the employee, within the period of 6 months after the end of that leave year, or

- (iii) where the employee—
 - (I) is, due to illness, unable to take all or any part of his or her annual leave during that leave year or the period specified in subparagraph (ii), and
 - (II) has provided a certificate of a registered medical practitioner in respect of that illness to his or her employer, within the period of 15 months after the end of that leave year.”.
- (2) Section 23 of the Industrial Relations Act 1990 is amended, in paragraph (a) of subsection (3), by the deletion of “(other than established civil servants within the meaning of the Civil Service Regulation Act 1956)”.
- (3) Section 2B (inserted by section 2 of the Financial Emergency Measures in the Public Interest Act 2013) of the Financial Emergency Measures in the Public Interest (No. 2) Act 2009 is repealed.”.

—An tAire Post, Fiontar agus Nuálaíochta.

56. In page 69, after line 19, to insert the following:

“Accessibility of hearings for those with a disability

- 87. Any premises used for the purposes of a hearing by an adjudication officer of the Labour Court or for the purposes of any mediation or case resolution meeting shall be suitable for access by persons with a disability.”.

—Mick Wallace, Peadar Tóibín.