

EMPLOYEES ACT 2006

Provision of Information and Consultation

With all the structural changes, redundancies and amalgamations that are going on in all Irish Business sectors at the moment we thought that it was important to discuss the obligations on employers to provide and consult with their employees about these impending changes. Obviously the employer is concentrating on running the business but he must also be aware of the effect and purport of The Employees (Provision of Information and Consultation) Act 2006. These are pertinent issues and the aim of this article is to give you a brief synopsis of the implications of this Act for today's employers.

This legislation transposing EU Council Directive 2002/14/EC became law in Ireland on the 24th July 2006. The Act introduces for the first time in Ireland an obligation on employers to establish arrangements to inform and consult with employees in relation to certain organisational and structural changes. Since 23rd March 2008 the Act applies to all employers with at least 50 employees.

The overall purpose of the Act is to establish systems in the workplace whereby employers will inform and consult with employees in advance of certain proposed changes in the workplace. Prior to this Act, the information and consultation rights of employees in Ireland were limited to specific situations e.g. collective redundancies and Transfer of Undertakings and those rights still apply.

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

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

The Act does however provide that employers may refuse to communicate information or undertake consultation where

such information and/or consultation would seriously harm the functioning of the employer's business or be prejudicial to the employer's business. However, this exception should be used only where absolutely necessary lest employers be seen to be holding back from employees.

In general, once the Act applies to an employer and the employer refuses to negotiate an agreement or where an information and consultation agreement cannot be reached within six months of commencing negotiations (which can be extended by agreement), the default Standard Rules set out in the Act will apply to that workplace. Alternatively, the parties may agree to adopt the Standard Rules in their workplace. The Standard Rules are not tailored to a particular workplace and, therefore, may be more difficult than a pre-existing agreement or a negotiated agreement to operate in practice.

The Standard Rules set out in Schedule 1 give some general guidelines of the Act containing provisions in relation to the size and structure of the information and consultation forum, the rules of procedure and then set out the matters on which employees should be informed and consulted. These include:

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

The Act provides that information and consultation can take place with employees directly or through an appointed or elected employee representative.

The Act contains provisions in relation to confidential information. It provides that an employee in receipt of information which is expressed, by the employer, to be

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

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

If there is any dispute in relation to the interpretation or operation of either the negotiated agreement or the standard rules both parties are obliged in the first instance to avail of any internal dispute resolution procedures which exist. If no resolution can be reached then the matter can be referred by either party to the Labour Relations Commission who can then refer the matter to the Labour Court whose determination can be enforced by the Circuit Court. A determination of the Labour Court can be appealed to the High Court on a point of law only and no appeal lies from the High Court. Any person found guilty of an offence under this Act shall be liable on summary conviction to a fine of up to €3, 000 and/or 6 months imprisonment and on indictment to a fine of up to €30, 000 and/or 3 years imprisonment. The Act also provides for the appointment of Inspectors with powers of entry onto premises to inspect and ensure compliance with the Act.

As this Act is quite complicated in nature it is advisable to seek legal advice to ensure that you are fully compliant with the contents of same so as not to fall foul of the mighty powers of the Court and to the hefty penalties that they can impose for non compliance.

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